United States Court of Appeals

for the Second Circuit

APPENDIX

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UNITED STATES OF AMERICA
vs.
CARMINE TRAMUNTI, et al.

S73 Cr. 1099

New York, February 11, 1974;
9.50 A.M.

Trial resumed.

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(In open court; jury not present.)

THE COURT: The reason I had you come in early today is I would like to try and get the applications which seem to come up every morning out of the way before we get the jury in.

First things first. I havegone through the transcription of the wiretaps involved with the witness Barnaba and I found some that I believe mention the defendants. Those I am turning over. There are two. One is identified as Reel No. A3408, line No. 8245910. In there there is a reference to Pat Gigi. I assume that that refers to one of the defendants.

The other one is A3413. I guess the line number here refers to phone number. Anyway there is a mention here of the word "Finnegan." Whether it refers to the defendant, I don't know, but I prefer to turn it over. I went through the 800 or so pages, the rest of it.

I could find no mention whatsoever of any of the other defendants or anything to do with this case. I thought in connection with two items that there was a reference to Salley, but this witness never mentioned the defendant Henry Salley, so I think it refers to someone by the name of Sal something. Under the circumstances I am not turning those over.

The first transcription which will be turned over will Court's Exhibit 57 for identification. I have made 21 copies. At this point one of the most important tools in the trial of this case is a Xerox machine.

xx (Court's Exhibit 57 marked for identification.)

THE COURT: The next Court's exhibit is Court's Exhibit 58 for identification. That is the reference to the word Finnegan. Again, I have 20 copies and the clerk will distribute them.

xx (Court's Exhibit 58 marked for identification.)

THE COUPT: Court's Exhibit 59 are the two transcriptions where a Sallevis mentioned. As I indicated, those are not being turned over and they will be sealed.

xx (Court's Exhibit 59 marked for identification.)

THE COURT: I did not carry down with me the rest of the material. It's a large box and I didn't particularly care to get a cart to bring it down. We will deem the rest of the material marked Court's Exhibit 60 for identification and that will be sealed also.

xx (Court's Exhibit 60 deemed marked for identification.)

THE COURT: Mr. Rosenberg, you looked like you were ready to make an application just before I started speaking.

MR. ROSENBERG: No. I am ready whenever the Court is ready.

MR. FISHER: If your Honor please, with respect to Court's Exhibit 60, the remainder of the transcription of the wires of Barnaba, without in any way limiting or qualifying our request for complete disclosure, I would ask alternatively that the government be required to stipulate if in fact the following exists, that no phone calls were received by Barnaba on the transcription from a man known as Gigi, the Whale --

THE COURT: Mr. Fisher, hold on. The identity of the person, as you will see, is given as James and John. I took that into account, anything that might have been

from anyone of the defendants.

MR. FISHER: My point is this, your Honor, the reverse: thewitness has testified, for instance, to frequent communications with Forbrick, for example. If it turns out that Forbrick never called within the period of this tap that would be a matter which could be used effectively I would think to impeach the credibility of this witness.

He has testified to numerous phone calls from Forbrick. If in fact the tap reveals no such phone calls I think, first, we are entitled to know that, and, second, in the event that the Court feels disclosure of the taps should be prohibited, at least merely to be told that no person identified as Forbrick ever called within the period of the tap. Similarly with regard to Inglese and with regard to any defendant here, to know that there was no such communication in the extensive period of copious wiretapping and eavesdropping might be beneficial to the defendants and it wouldn't in any way disclose what was in fact said on the wire.

THE COURT: Mr. Curran.

MR. CURRAN: Your Honor, the witness's testimony with respect to telephone conversations with Richard Forbrick, if your Honor recalls, goes back to the year

1970 and into perhaps a little bit of the year 1971.

As your Honor knows, this transcript was obtained by the government a week ago last Saturday from Mr. Miller. I obtained it after finding out about it in an excess of caution and then submitted it to your Honor.

It was my information, and still is, from Mr. Miller and Mr. Rogers' office that no defendant appears on this transcript or on this wire.

THE COURT: The voice.

MR. CURRAN: The voice of no defendant.

THE COURT: I couldn't find any.

MR. CURRAN: I think that the balance of it speaks for itself, particularly since your Honor has reviewed the entire transcript.

THE COURT: Yes. It was a great joy to me also to have to do that.

All right. One other thing. We are getting down to the point of the trial where all defense counsel more or less know what the government's case is. I would like to receive requests to charge as promptly as possible. I would like you to have them in on Friday of this week, but I am not going to restrict you to Friday. In other words, if something comes up you were not aware of, anything like that, it can come in up to let's say the day before

summations.

I have to rule on them before summations. I can't rule on them unless you give me a chance to read the requests and also the cases backing them up.

MR. RICHMAN: If the Court pleases, I just became aware Friday afternoon that there has been an agent sitting in the courtroom throughout the entire trial.

THE COURT: He was identified the first day. You mean this gentleman right here?

MR. RICHMAN: No, not that one. Mr. Shutes, Torrey Shutes, in the first row.

THE COURT: I don't know Torrey Shutes.

MR. RICHMAN: That seems to be the problem. We have a representation from the government that he will not be called. However, in reading Mr. Barnaba's debriefing and these reports submitted on the case, the only 3500 officially designated by an agent, it is signed by Torrey Shutes and he has done all the debriefing.

It seems to me, your Honor, that if he has been sitting in the courtroom while the witness Barnaba has been testifying, and he has been, that his usefulness will be detrimental if we were to call him and his ability for the purposes of rebuttal or to impeach the testimony of this particular witness is being largely undercut by his presence in the courtroom. I would respectfully request he be excluded.

THE COURT: No, I don't think that is necessary.

MR. ROSENBAUM: Your Honor, may I add something to that, please?

THE COURT: Yes, sure.

MR. ROSENBAUM: On redirect examination of Mr. Stasi Mr. Phillips asked Mr. Stasi whether or not he at any time indicated that there was a quarter of a kilo of heroin sold to anyone, whether or not MR. Stasi had made mention of that to any of the investigating officers,

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and the question was rather leading by Mr. Phillips, such as, "Did you tell Officer Torrey Shutes about a quarter kilo of heroin being sold?" and the answer, as I recall, was yes to that.

Now, for the last few days, your Honor, from the middle of last week, even as of Friday afternoon, I tried to get the 3500 material with reference to Torrey Shutes and any and all memoranda, notes, reports prepared by Officer Shutes with reference to the debriefing of Mr. Stasi relating to Mr. D'Amico. To date I don't have that and now I find that Mr. Shutes is in the courtroom and that becomes a great prejudice to my client also.

THE COURT: I think that you had the 3500 material, or I hope to God you had it, at the time Stasi was on the stand. I don't know of any other, the government does not know of any other either.

MR. ROSENBAUM: I have asked the government whether or not they would give to me any other notes, any memoranda with reference to Shutes' debriefing of Mr. Stasi. I have 3500 material that relates to Mr. Barnaba, a minimal amount related to the debriefing of Mr. Stasi. I asked for memoranda relating to any other information obtained from Mr. Stasi by Mr. Shutes. I have not gotten that. I have no representation from the govern-

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ment that any may or may not exist.

THE COURT: I assume it does not exist. That is asking for a reversal in the worst way.

Mrs. Rosner, there was a phone call from Judge Griesa, who for some reason is expecting you to be there, wherever he might be.

MRS. ROSNER: Thank you.

THE COURT: You want to see if you can get someone to cover for you or work out something to take care of it?

MRS. ROSNER: I will call during the lunch hour, Judge.

THE COURT: I am going to take a five-minute break, get my robe on, get the witness, get ready to go.

MR. RICHMAN: Is it my understanding your Honor is permitting Mr. Shutes to stay in the courtroom throughout the testimony of Mr. Barnaba?

THE COURT: Yes. Apparently he is not going to be a witness, as far as I know.

MR. RICHMAN: Your Honor, we may have to call him. As such, what is the point of calling him if he is going to hear everything Barnaba says. If you call him to contradict, to impeach, he is going to

be prepared.

THE COURT: I can't picture the possibility.

MR. CURRAN: Your Honor, there are to DEA agents working this case, Mr. Fitzgerald and, as everyone knows and your Honor knows, Agent Shutes.

Agent Shutes has not been in the courtroom throughout the entire trial. He has been in the courtroom a good part of the trial. He is actively working on the case with the United States Attorney's Office and we believe that he should be permitted to remain in the courtroom. We do not intend to call him.

THE COURT: All right. I think he can remain also.

Is there anybody else who has an application?

MR. POLLACK: Your Honor, I respectfully except to the court's continuing to seal the 3500 material which involves Mr. Salley.

THE COURT: No, no, no. It does not.

MR. POLLACK: I misunderstood then.

THE COURT: The word "Sallie" is used, but the word "Sallie" apparently refers to someone whose first name is Salvatore, Salvatore-somebody-else. It does not refer to Salley. Lord knows, if I even thought

there was the possibility that it did you would have it.

MR. POLLACK: Under those circumstances I withdraw any objection.

THE COURT: All right.

MR. SCHWARTZ: I just wanted to say, your Honor, that I have a matter in the Supreme Court. Mr. Dowd is going to cover for me for a short period of time.

MR. WARNER: In the same vein, your Honor, something has come up, I have to be out of the courtroom for about 35 minutes. Mr. Richman will cover.

THE COURT: Fine.

MR. ROSENBAUM: I am sorry to belabor the point, but your Honor has indicated that you believe there is no other material from Mr. Shutes. I have not heard a representation from the government and that is all I am directly requesting. Is there any other memoranda, any other notes, any other debriefing material, tapes or otherwise, that the government has with reference to debriefing of Mr. Stasi by Torrey Shutes?

THE COURT: Counsel, if there was and you didn't have it, I think that they would be entitled to call their psychiatrist as the first witness.

MR. ROSENBAUM: Your Honor, again, I appreciate what your Honor is saying, but I intend at this point to call Mr. Shutes and I want to know whether or not there is any other memoranda. The government is not making that indication.

THE COURT: I doubt if there is. Let's take five minutes. If there is something you want to work out with Mr. Curran and his group, fine. Let me take five minutes to get my robe on, get all the rest of the stuff.

(Recess.)

(Jury present.)

THE COURT: I hope your weekend was pleasant, ladies and gentlemen.

J O H N B A R N A B A resumed.

THE COURT: You recall, Mr. Barnaba, that you were placed under oath last week. That oath continues today.

CROSS EXAMINATION CONTINUED

BY MR. ROSENBERG:

Q Sir, I believe on Friday you told us that Frank Rogers told you when you were picked up in November of 1972 you were facing an A felony, is that correct?

A Yes, sir.

Q You recall at that time he said something to the effect that you were facing 50 years, is that correct?

A Yes.

Q You recall during the course of that conversation you said to Mr. Rogers, "I don't want to go to jail, I can't take it"? Do you recall anything like that?

A I recall saying, "I don't want to go to jail."

Q Do you recall saying, "I can't take it'/

A No, sir.

Q I show you page 9 of the transcript of your conversation between you and Mr. Rogers and I ask you to look at it (handing).

A Yes.

Q Does that refresh your recollection as to whether or not you told Mr. Rogers you cannot take it?

A Yes, sir.

Q And did you tell that to him? Did you tell it to him?

A Yes,sir.

Q All right.

And do you recall Mr. Rogers telling you in November of '72 that"If you don't know nothing, we can't use you"?

A To the best of my recollection, no.

Q You don't recall that?

A No.

Q I show you page 17 of the transcript and I ask you to read it (handing).

A All right.

Q Having read it, does it refreshyour recollection?

A Yes, sir.

Q And Frank Rogers did tell you, "If you don't

know nothing, we can't use you," is that correct?

A Yes, sir.

Q After that he permitted you to go out into the street, correct?

A Yes, sir.

Q And there came a time subsequent to November, '72 when you gave them some notes in your own handwriting; do you recall that?

A Yes, sir.

Q I show you these notes. Is this what you gave him?

A Yes, sir.

Q And do you recall when you wrote these notes?

A When I wrote them?

Q Yes.

A Sometime in '73.

Q So it was some time in A.73 --

MR. CURRAN: Just for the record, could we refer to the notes as -- you are referring, I assume, to Government's Exhibit 3549?

MR. ROSENBERG: Is this it (indicating)?

MR. CURRAN: Yes. That is Government's Exhibit 3549, your Honor, for identification.

Q And that was when in '73?

A October, November, I believe, to the best of my knowledge.

Q October, November, '73.

So it was this October, November of '73 that you wrote down what you said happened between you and Pugliese some time in 1970, is that correct?

A Yes, sir.

Q After November of '72 you were taped out and you weren't outside to meet people, is that correct?

A Yes.

Q And some time in March or April of '73 you saw Pugliese, is that correct?

A Would you repeat that, please?

Q Some time in March or April of '73 you saw Pugliese?

A Yes.

Q And did you bring back to Mr. Rogers or to anybody else any conversation with respect to a narcotic transaction between you and Pugliese?

A I don't recall.

Q When you say you don't recall, you mean it might have happened but you don't recall bringing back the transcript?

A It might have, yes.

Q But you are not certain?

A No, sir.

Q You are not?

A No.

Q Well, from November of '72 you were cooperating fully with the government and with Mr. Rogers' office, is that correct?

A Yes, sir.

Q And any transcription that you got involved with you told him about, is that correct? Any conversations dealing with narcotics you told him about, is that correct?

A That they would know about, yes.

Q Do you recall telling him about any conversation between you and Pugliese in March or April, 1973 dealing with narcotics?

A No, sir.

Q You do not.

Now, I believe you told us Pugliese introp ducedyou to a few people, is that correct?

A Yes, sir.

Q And you told us that he introduced you to these people so that you were to do business with them, is that correct?

A Yes, sir.

Q Did you give Pugliese any money for these introductions?

A No, sir.

Q So you are telling this jury that Pugliese involved himself in a narcotics transaction for which he can get life in prison and he didn't make a dollar from you? Is that what you are telling us?

MR. CURRAN: Objection to the form of that your Honor.

THE COURT: Yes. Reform the question.

Q You told us that the purpose of Pugliese introducing you to people was for you to deal with narcotics, is that right?

A Yes.

Q And you told us, also, that as a result of those introductions you were making money, Pugliese was involved with a conspiracy with you, but Pugliese did not make any money, is that correct?

MR. CURRAN: I object to the form of that, your Honor.

THE COURT: Yes.

Q Now, I believe you told Mr. Rogers that you would like to deal with black people, is that correct?

A That I would --

Q In your narcotics transactions, you like to deal with black people?

A I don't recall that.

Q You don't recall that?

A No.

Q Did you tell Mr. Rogers you like to deal with them because you can rip them off easily, you can rob them?

A No, sir.

Q They were easier to steal from?

A I don't recall that, no.

Q You don't recall that?

A No, sir.

Q Let me see if I can refresh your recollection.

I show you page 22 of the transcript of the conversation between you and Mr. Rogers and I ask you to read it (handing).

A Yes.

Q And having read it, does it refresh your recollection that you said that you like to deal with black people because you can fool around with them?

A Yes.

Q You recall that, huh?

You robbed one of your customers of $3000, didn't you?

A I don't remember. When was this?

Q When was this?

A I don't recall it.

Q You don't recall?

A No.

Q How about Mr. Burke, did you give Mr. Burke some kind of what purported to be narcotics and took 3000 from him?

A Yes.

Q You did? And Mr. Burke told you in a telephone conversation that he flushed it down the toilet and he came looking for you, he wanted his money back?

A Yes, sir.

Q Is that correct?

A Yes, sir.

Q You robbed him of the $3000, didn't you?

A I gave him something for his $3000?

You gave him something for the $3000 which he didn't use and he came looking for you with a gun, is that correct?

A He claims he didn't use it.

Q But he came looking for you with a gun, is

that correct?

A Yes, sir.

Q I think you told this jury on Friday that you were convicted of desertion. Is that during the Korean conflict?

A I believe it was, yes.

Q And at that time when you were inducted in the Army, did you take the oath to uphold the Constitution, an oath similar to what you took just now?

A I was in the Reserves at that time.

Q I asked you whether you took an oath.

MR.CURRAN: Objection, your Honor. The question went to induction.

THE COURT: Yes, I know.

At the time of your induction into the service did you take an oath?

THE WITNESS: Yes, I did.

Q Pretty much as the oneyou took now, is that right?

A Yes.

Q And you violated that oath, did you not?

A I don't understand the question.

Q You didn't live up to your responsibility, is that correct?

A Well, I served in the Army and I was honorably discharged, then I was put in the Reserves.

Q Did you go to jail for desertion?

A Yes, I did.

Q So you didn't live up to your responsibility, is that correct?

MR. CURRAN: I object to that, your Honor.

THE COURT: It is argumentative.

Q Mr. Barnaba, so that I understand, you wouldn't mind telling a little lie, would you, if you could avoid going to jail for 50 years, isn't that correct, sir?

A No, I don't think so.

Q You don't think so?

A No.

Q You deserted your country in time of war, you sold narcotics, but you wouldn't tell a lie, is that what you are telling this jury?

A Anything that I have said here hasn't been --

Q Never mind that.

THE COURT: No, no. Let him answer.

MR. CURRAN: He is answering the question, your Honor.

MR. ROSENBERG: I asked him whether or not

he would tell a little lie in order to avoid 50 years in jail.

THE COURT: Look, please.

MR. ROSENBERG: That is what I am asking.

THE COURT: All I want is the answer to the question asked.

MR. CURRAN: Your Honor, might the last question be read to the witness?

THE COURT: Yes.

(Record read.)

Q Can I get a yes or no to that.

MR. CURRAN: There is an answer.

THE COURT: No. Part of the answer came out. Now let the whole answer come out.

A Shall I answer?

THE COURT: Yes, answer it.

A What I have said here is not a lie.

Q Very good.

Now I will ask you again, would you tell a lie if you could avoid 50 years in jail?

A I might.

Q You might? So that the oath you took doesn't really mean too much to you, is that correct?

THE COURT: Sustained.

Q Well, let me ask you this: Do you consider yourself an honorable man, a man of integrity?

A I do.

Q You do? If you weren't in court in November of '72 dealing for dealing in narcotics, you would still be dealing in narcotics, is that correct? The only thing that stopped you was the fact that you were caught, is that correct?

MR. CURRAN: I object to the two questions, your Honor. He didn't answer the first one.

MR. ROSENBERG: Well, he can answer either one of them.

THE COURT: I consider both of them linked together.

Go ahead and answer it.

A I might have.

Q You might have continued?

A Probably.

Q And yet you were yourself an honorable man, a man of integrity, is that correct?

A Yes.

Q I see.

From November of '72 to the present date how many different people did you speak to concerning your

testimony in this case?

A Two.

Q Who was that?

A Mr. Phillips and Mr. Curran.

Q How about Mr. Rogers?

A No, sir.

Q Nobody else?

A No, sir.

Q And how long in period of weeks, how many weeks did you speak to them?

A Well, it wasn't -- you mean a whole week at a time?

Q Let us take it day by day.

How many days would you say that you spoke to them?

A A couple of days out of a week.

Q For how long a period of time?

A Three or four weeks.

Q And how many hours during the day?

A Three or four hours.

Q So what would you estimate the total time that you spent in conversations with somebody in the government on this case? About 40 or 50 hours?

A Roughly.

Q And did they tell you in case any of the lawyers should ask you with respect to your testimony that you should answer, "I am testifying because I want to help myself"? Did they suggest that kind of an answer to you?

A No, sir.

Q They did not?

A No.

Q And if I were to ask you that question, would you say, "Because I'm helping myself"?

A Would you repeat that?

Q The purpose of your testimony as far as you are concerned, is it to help yourself?

A Well, I don't want to go to jail.

Q I understand that. So that's the purpose of your testimony, to help yourself?

A I would say so. I would say so.

Q But that was not suggested by the government to you?

A No, sir.

Q This is your own, independent, free thinking, is that correct?

A Yes, sir.

Q I see.

When you first started dealing in narcotics I believe Pugliese was about eight or ten years old, is that correct? You started dealing in narcotics around '52?

A Yes, sir.

Q And he was about eight or ten years old at that time?

A I wouldn't know.

Q You wouldn't know? Do you know how old he is now?

A No.

Q You don't know?

A No.

Q At any rate, you didn't need Pugliese to introduce you to anybody when you started off in the narcotic business, is that correct?

A At that time?

Q Yes.

A No.

Q Now, you know Mr. Pugliese to be a hard worker, is that correct?

A Yes.

Q He works on construction?

A Yes.

Q As a matter of fact, he was a construction foreman, he got you a job?

A Yes, sir.

Q He paid for your book?

A Yes, sir.

Q Is that correct?

A Yes.

Q I think you told us that --

MR. ROSENBERG: No, withdrawn.

Q You went to California --

THE COURT: Counsel, can we clean up what a book is? When you said he paid for your book --

Q That is a union book, is that right?

A Yes.

Q That permits you to work?

A Yes.

Q And it was Pugliese that paid for it, is that correct?

A Yes, sir.

Q You went to California in 1966?

A Yes, I did.

Q Was that because there was some trouble?

A Yes.

Q And what was the trouble that you were in at that time?

A That I was in?

Q Well, who was in trouble?

A I was.

Q What kind of trouble were you in?

A That I had threats on my family.

Q Pugliese didn't threaten your family, did he, in 1966?

A No. No, sir.

Q Did somebody threaten your family because of your activities?

A Yes, sir.

Q And what is it that you were supposed to have done that there were threats on your family?

A It wasn't anything that I done.

Q I know. What was it that somebody was confused

about, they made a mistake about that you were supposed to have done?

A I didn't do anything. They wanted money from me.

Q For what reason?

A I don't know.

Q You don't know?

A No.

Q Somebody wanted money from you, you don't know why they wanted money from you?

A No.

Q And they threatened your family?

A Yes.

Q And that's what it is?

A Yes.

Q And to his date you don't know why people wanted to extort money from a nice guy like you, right? Is that correct?

A They thought I had money, they wanted it.

Q Did you have money?

A No.

Q All right. You told us that Pugliese told you that he shot Paulie the Arrow, correct?

A Yes.

Q Did you ever speak to Paulie the Arrow?

A No.

Q Never met him?

A No.

Q Don't know who he is?

A I know him by sight.

Q Do you know that Paulie the Arrow was interviewed with respect to that shooting by the police?

A No.

Q You do not know that?

A No.

Q Do you know whether Paulie the Arrow ever made a complaint against Pugliese?

A No, sir.

Q And you don't really know of your own knowledge whether or not Pugliese had, in fact, shot Paulie the Arrow, all we know is what you are telling us Pugliese told you, is that correct?

A Yes.

Q You don't know?

A No.

Q I believe you told us on Friday that Harry gave you a package which you gave to somebody else, you sold for 3500 and there is a $500 profit.

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Do you recall that?

A Who gave me the package?

Q I think it was Harry.

A No, sir. Patty gave it.

Q Patty?

A Yes.

Q Patty gave you a package, you sold to somebody else for 3500 and you made a $500 profit, is that right?

A Yes, sir.

Q And you told us that day that it was Butch Pugliese that introduced you to Patty and introduced you to the other party, is that right?

A Yes.

Q You made a $500 profit, is that right?

A Yes.

Q How about Pugliese, did he make any money for this alleged introduction?

A None that I know of.

Q So he did it because you were a nice guy, is that right?

A I wouldn't know.

Q I see. But it's also necessary for you in order to save yourself 50 years in jail for you to give up dates and situations and meetings between people or else you

had nothing to sell to Frank Rogers, isn't that correct?

MR. CURRAN: Your Honor, I object to that.

THE COURT: I will sustain it.

Q You told us, also, on Friday that Butch gave you a package, Butch Pugliese gave you a package and you took it up to Tardi's to meet somebody, is that correct?

A Yes.

Q You told him it was narcotics, correct?

A Yes.

Q How was that package wrapped?

A In a bag.

Q What kind of bag?

A A paper bag.

Q You mean an ordinary brown paper bag?

A Yes, sir.

Q Inside waswhat?

A A plastic bag.

Q A plastic bag? Did you look inside the plastic bag?

A No.

Q So that you took a paper bag and you brought it to somebody, is that correct?

A Yes.

Q So you of your own knowledge do not know whether

or not in that bag was heroin, am I correct?

A I didn't look at it, yes.

Q You don't know whether it was heroin, is that correct?

A No.

Q But you told the government and you told Frank Rogers it was heroin because unless you did that you couldn't save yourself from 50 years in jail, is that correct sir?

MR. CURRAN: Objection, your Honor.

THE COURT: Sustained.

Q Can you tell heroin by just looking at it?

A No.

Q All right.

MR.ROSENBERG: I have no further questions.

THE COURT: Mr. King.

MR. ROSENBERG: Excuse me, just one other question.

BY MR. ROSENBERG:

Q When did you meet Pugliese in front of that Beach Rose Social Club?

A To the best of my recollection, July or August.

Q Of what year?

A Pardon?

Q Of what year?

A '70.

Q 1970?

A Yes.

Q And what day of the week was it?

A I don't know the date. I am sorry.

Q Was it during the week or was it on a weekend?

A No, it was during the week.

Q During the week? July or August of 1970 during the week, is that correct?

A Yes.

Q Okay. Thank you.

THE COURT: All right, Mr. King.

CROSS EXAMINATION

BY MR. KING:

Q Good morning, Mr. Barnaba.

A Good morning.

Q My name is King, Leonard King, and I represent John Gamba.

Now, I think I should tell you, if you don't know it, that I have a hearing impairment.

A No, sir.

Q And I understood you to say you had a sore throat?

A Yes, sir.

Q Well, can we cooperate with each other? I will strain myself to hear you and will you try to raise your voice?

A Yes, sir.

Q Thank you very much.

Now, Mr. Barnaba, when were you first arrested?

A November.

Q November of what?

A '72.

Q '72? And where was that?

A Where did it take place?

Q Where were you arrested?

A In the Bronx.

Q Where in the Bronx?

A In -- by Korvette's.

Q I'm sorry.

A By Korvette's.

Q And after your arrest --

THE COURT: Hold on, Mr. King. There are tw Korvettes in the Bronx. You may not know it, but I do.

Which one of the Korvette's, Mr. Barnaba?

THE WITNESS: White Plains Road and Bruckner Boulevard.

MR. KING: Thank you, sir.

Q And immediately after your arrest, where were you taken?

A Downtown here, Federal Plaza.

Q Where downtown?

A Federal Plaza.

Q Was that at the division of which Mr. Rogers was the head?

A I believe so, yes.

Q And how soon after you were taken to Federal Plaza were you interviewed?

Were you interviewed by anybody immediately after you were taken there?

A Yes.

Q And that was by whom?

A Mr. Rogers.

Q And was anyone else present at that interview?

A There were a number of people present. I don't know who they were.

Q Well, was Mr. Miller there?

A I believe so, yes.

Q And a police captain?

A I don't know.

Q And another detective?

tp10 Barnaba-cross

A There may have been.

Q What time of the day or night did this arrest occur?

A 9 o'clock, 9.30, something like that.

Q At night?

A Yes, sir.

Q And when you arrived at Federal Plaza, did the questioning by Mr. Rogers -- I assume it was Mr. Rogers who started the questioning of you, is that correct?

A Yes, sir.

Q And how soon after 9 o'clock did that questionin start?

A Maybe an hour, maybe a little more.

Q And for how long, sir, did it continue?

A Quite a while. I don't -- I don't know just how long. I was --

Q Well, can you recall whether it was before or after midnight?

A That we were done?

Q That the questioning continued.

A I would say it was after midnight.

Q And can you recall what time in the morning of the day following, the evening following your arrest the questioning ceased or terminated?

tpll Barnaba-cross

A No, sir, I don't recall.

Q Well, was it 3 o'clock, was it 3.00 a.m.?

A It might have been, yes.

Q Was it 4.00 a.m.?

A No, I don't think it was that late.

Q All right.

Now, during the course of that first interview between you and Mr. Rogers, did Mr. Miller participate?

A I don't think so, no.

Q Was there a captain there who was smoking a pipe? Did he participate?

A Not that I recall.

Q Well, are you saying that there was only Mr. Rogers who questioned you during that first period?

A Well, there were other people in the room.

Q Sir?

A There was other people in the room. It was mostly --

Q You have told us that. I am asking you now whether there were other people who questioned you besides Mr. Rogers.

A I don't believe so.

Q During that period, from about 10.00 p.m. till approximately 3.00 a.m. the following morning that you

were being questioned, is that the time that you agreed to cooperate with the police?

A Yes, sir.

Q When for the first time did you agree to cooperate with the United States Government?

A Following the -- the best of my recollection, it was the following year.

Q When in the following year?

A I think about September.

Q That would be '73?

A Yes, sir.

MR. KING: Will your Honor bear with me a moment?

THE COURT: Sure.

(Pause.)

Q Would it be a fair statement that you, after you had agreed to cooperate with the United States Government, conferred with Mr. Phillips in regard to this case?

A Yes.

Q From about October 2, 1973, to about December 5, 1973?

A Yes, sir.

Q And that had to do with the manner in which you were going to cooperate with the government to snare as many defendants here as possible, is that correct?

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MR. CURRAN: I object to that, your Honor.

THE COURT: Yes. Reframe the question, please.

Q When Mr. Rosenberg, the attorney who questioned you just before me, showed you a handwritten copy, consisting of 32 pages, is this a similar copy that he showed you, sir, outside of the name King and the other writing on there? Is that a photocopy of what you write out?

A Yes,sir.

THE COURT: That, of course, is Government's Exhibit 3549 for identification?

MR. CURRAN: Yes, your Honor.

MR. KING: Does that have an exhibit number?

MR. CURRAN: Yes. Government's Exhibit 3549 for identification.

MR. KING: 3549?

MR. CURRAN: Yes, sir.

MR. KING: Thank you.

Q Now, when you wrote out this Exhibit 3549 for identification, it's in narrative form, is it not? It's just as though you sat down and told somebody events over a period of time, is that correct, sir?

A I wrote it out myself, yes, sir.

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Q What I am getting at is that what you wrote here was not responsive to any specific questions put to you, is that correct?

A Yes.

Q At whose suggestion did you write this narrative?

A It was no suggestion. I wrote it out myself.

Q When did you do it, sir?

A Some time in November.

Q Of 1973?

A Yes. In October or November.

Q I beg your pardon?

A October or November.

Q October, '73?

A Yes, sir.

Q Is that what you said?

A Yes.

MR. CURRAN: Or November.

MR. KING: Thank you, Mr. Curran.

Q Do you remember fairly well the contents of these 32 pages, Exhibit 3549 for identification?

A I think so.

Q Can you tell without consulting it whether there is any reference whatsoever to John Gamba in this narrative?

A Yes, I can.

Q You can tell?

A Yes.

Q Would you tell his Honor and the jury whether there is one single word in here about John Gamba?

A There isn't, no.

Q Not one, is that correct?

A No.

Q Isn't it a fact that this narrative contains names of at least a dozen people with whom you dealt?

A I would say so.

MR. FISHER: Objection, your Honor.

Q But John Gamba is not mentioned?

A No, sir.

THE COURT: I will permit it. John Gamba is not mentioned.

Q Let me askyou, Mr. Barnaba, whether you at any time prior to your arrest or after, when you were cooperating with the government, had any kind of narcotics transaction with John Gamba whatsoever.

A I personally? Myself personally?

I don't understand the question.

Q I will repeat it. At any time can you recall having had any narcotic transaction with John Gamba?

A I myself? Do you mean myself personally?

THE COURT: Yes, you yourself.

Q Yes, you yourself, only yourself.

A No, sir.

Q You do know John Gamba, I take it, because you met him a couple of times at social functions, is that correct?

A Yes, sir.

Q It had nothing to do with narcotics, did it?

A No, sir.

Q Before testifying here last Thursday and Friday did you have a review of your testimony with either Mr. Curran or Mr. Phillips?

A No, sir.

THE COURT: I think that question could be taken in two ways and I think the answer could also be taken in two ways. Would you ask the question again, please, Mr. King.

MR. KING: Yes, sir. I will rephrase it, Judge.

Q Before you testified here last Thursday and Friday, how long before those two days did you have a conference regarding your testimony with either Mr. Phillips or Mr.Curran?

A A week before, four, five days before.

Q About a week before, sir, isthat what you said?

A Yes, sir.

Q At that time was any suggestion made to you as to what testimony or what questions you were going to be asked regarding John Gamba?

A No, sir.

Q So that the very first time you say you heard the name John Gamba mentioned was in this courtroom on Friday, is that correct?

MR. CURRAN: I object to that, your Honor.

THE COURT: Yes. I think that assumes something which is not in evidence.

Let me ask the question. During your conversations with Mr. Curran or Mr. Phillips did you ever mention the name John Gamba?

THE WITNESS: Yes, I did.

THE COURT: All right.

Q Since your arrest, Mr. Barnaba, have you communicated with either Patty or Harry Pannirello?

A No,sir.

Q I take it then that your last conversation with either or both of them was before your arrest, is that correct?

A Yes, sir.

Q Sir, let me ask you this: are you a narcotics addict or user?

A No, sir.

Q Have you ever been?

A No, sir.

Q Have you ever submitted to psychiatry of any kind?

A No, sir.

Q I ask you that question because I noticed during Thursday and Friday you would --

THE COURT: No, no.

MR. KING: May I finish my question?

THE COURT: I am afraid of what it is going to be.

MR. KING: May I make an offer of proof, Judge?

THE COURT: Sure.

MR. KING: May we approach the bench?

THE COURT: Absolutely. Come on up.

(At the side bar.)

MR. KING: What I proposed to ask the witness, I noticed that he made compulsive movements with his hands, reaching into his pocket as though he was looking for something. I noticed that he did that frequently.

THE COURT: That is the type thing you should argue to the jury instead of trying to get it out from this

witness. All you can do in doing that is to provide the witness with an opportunity to explain it. What do you need that for?

MR. KING: All right, Judge.

(In open court.)

MR. KING: I have no further questions, Judge. Thank you.

THE COURT: Ladies and gentlemen, it's a little early for our morning break, but I am going to have it right now for the very simple reason I don't want to break into anyone's cross-examination.

Mr. Marshal, would you escort the jury to their room.

(Jury left the courtroom.)

THE COURT: I have a list up here of the order of those people who wish to cross-examine. Mr. Richman, you are next on the list.

MR. RICHMAN: That's right.

THE COURT: Mr. Ellis, Mrs. Rosner, Martin J. Siegel, Ed Panzer, Michael G. Dowd, Frank Lopez and Ivan Fisher.

Is that correct, that is the way you want it to go?

MR. LOPEZ: Yes.

THE COURT: All right. Let's take ten. Mr. Richman, you will start off.

(Recess.)

(Jury present.)

THE COURT: Mr. Richman.

MR. RICHMAN: I believe Mr. King has two more questions.

THE COURT: All right, fine.

BY MR. KING:

Q Mr. Barnaba, I have just a couple more questions to ask you.

A Yes, sir.

Q Since your arrest have you had an opportunity to converse with or talk to Harry Pannirello or Patty?

A No, sir.

Q Right up to the present time?

A Yes, sir.

Q When is the last time that you saw John Gamba?

THE COURT: Your mean prior to this trial, right?

MR. KING: Prior to the trial, yes. Thank you, judge.

A In other words, at any time at all up --

Q I didn't hear you.

THE COURT: Yes, at any time at all prior to this trial when is the last time you saw him.

A November.

Q November of?

A '71.

Q '70?

A '1.

Q That was at some social function, I take it?

A No, sir.

Q Wherever it was, you say the last time you saw him was in the latter part of 71, is that correct?

A Yes, sir.

Q At that time --

MR. KING: Stand up, Mr. Gamba.

Q -- can you tell the court and jury whether he had that moustache and long hair?

A He didn't have a moustache. I don't know about the long --

MR. KING: Keep standing I finish my question.

Q Was his hair as long as you note that it is now?

A I don't recall. I don't recall, sir.

Q But he didn't have the moustache?

A No, sir.

Q When you say you don't recall, it is possible that his hair was not as long, is that correct?

A Possible.

MR. KING: I have no further questions.

MR. RICHMAN: If the court please, I have asked my client to move up to assist me in the preparation of certain questions.

THE COURT: Sure, absolutely.

MR. STOTSENBURG: Your Honor, before the interrogation goes further, at the request of specifically my client, whom I have now advised needn't be here, I would like to have my client appear in the courtroom. My client has asked if she could come in.

THE COURT: The answer is no.

All right. Let's continue with the trial.

CROSS EXAMINATION

BY MR. RICHMAN:

Q Good morning, Mr. Barnaba.

A Good morning.

Q My name is Murray Richman. I represent Benjamin Tolopka.

You know Benjamin Tolopka, do you not?

A Yes, sir.

Q How long do you know him?

A Since about 1967.

Q Where did you meet him?

A The first time?

Q Yes.

A To the best of my recollection, upstate New York.

Q Where is that, in Clinton, New York?

A Yes, sir.

Q At that time was he living in Clinton, New York?

A No, I don't think so. He was living a little ways out.

Q He was living in a summer home around Warren, New York, is that right?

A Yes.

Q That was during the summer of 1967, you say?

A Yes, sir.

Q You were residing in Clinton for some period of time, were you not?

A Yes.

Q How long were you living there?

A About six or seven months.

Q When did you move away from Clinton?

A In '67.

Q Do you remember approximately what month?

A I think November.

Q About November of 1967 you moved from Clinton, New York. You were living up in Clinton. What were you doing up there?

A I had a farm there.

Q You had a farm?

A Yes.

Q How did you meet Mr. Tolopka?

A Through a fellow that we both knew, Fred Lalli.

Q He came over to meet you at your farm?

A Yes.

Q Did you remain in contact with Mr. Tolopka over the next few years?

A I saw him now and then, yes.

Q There came a time some time in May of 1970 that you were employed in a used car lot, were you not?

A Yes.

Q Which car lot was that?

A Jimmy's Used Cars.

Q At that time did Mr. Tolopka come to see you?

A No, sir.

Q He never came to see you about buying a car?

A No, sir.

Q Is it your testimony that Ben Tolopka never approached you with a view toward buying a car?

A Yes, sir.

Q In all the period of time that he knew you?

A Yes, sir.

Q By the way, did he know you under the name of

John Barnaba?

A As far as I knew, yes.

Q Did you have any other names that you were using?

A No, sir.

Q Did you ever use the name John Bonneville?

A Barnaba, that's my name.

Q Bonneville.

A No, sir.

Q John Bonneville was never used by you?

A Not by me, no.

Q What about the name John Bruno?

A Bruno, yes.

Q That was used by?

A Yes.

Q In fact, that was used by you regularly up till the time of your arrest, was it not?

A Well, my phone was under that name. That's the only way it was used. I never used it anywhere else, on the street or anything.

Q Your phone listing?

A Yes.

Q Could you explain to us the purpose of having it under another name?

A Could you repeat that?

Q What was the purpose of having it under the name of John Bruno?

A Having it under John Bruno?

Q Yes.

A I didn't want it under my name.

Q You were afraid that it might be tapped?

A No, that didn't come to my mind. I just didn't want it under my name.

Q Was your credit bad with the phone company?

A I wouldn't know. It may have been.

Q You just didn't want it under your name?

A Yes.

Q This was when you were residing at 641 Revere Avenue?

A What are we talking about, May, 1970?

Q No. I am talking about when you used the name John Bruno.

A I believe so, yes.

Q What year was that, by the way?

A On Revere Avenue?

Q Yes.

A '72.

Q How long did you live at Revere Avenue?

A Not too long.

Q Well, how long is not too long?

A Ten, 11 months, maybe.

Q Taking you back to May of 1970, you have a brother named Anthony, do you not?

A Yes, I do.

Q And on or about May of 1970 he was involved in an altercation, was he not?

A I don't understand the word, counsel.

Q He was shot, wasn't he?

A My brother?

Q Yes.

A Was shot?

Q Yes.

A No, sir

THE COURT: The answer is no, your brother was not shot?

THE WITNESS: No, he was not.

Q By the way, throughout the course of your

direct examination you kept mentioning the name Richard Forbrick?

A Yes, sir.

Q Do you see Mr. Forbrick in this courtroom?

A No, sir.

Q You were pretty friendly with Richard Forbrick?

A Yes, sir.

Q You were very close friends?

A I would say so.

Q You made home visits together on numerous occasions?

A Yes, sir.

Q And you were pretty close to his wife Esther?

A Yes, sir.

Q And you and Liz, your wife, went out together often with them?

A I wouldn't say often; a few times.

Q You exchanged family visits and any family occasions you were sure to participate in, didn't you?

A Well, quite a few times, yes.

Q I direct your attention to June of 1970. You are aware that Mr. and Mrs. Forbrick have a son or

had a son?

A He had more than one son.

Q The son in particular was graduating that year?

A I don't recall.

Q Isn't it a fact that you were invited to the graduation and you couldn't attend?

A I have no recollection of that.

Q Now I direct your attention to the end of August, 1970. In your direct testimony you stated that you had certain transactions with Ben Tolopka, is that correct?

A Yes, sir.

Q Will you tell us approximately when in August that was?

A The date?

Q The approximate date, to the best of your recollection.

A I can't, no, sir.

Q It was the end of August, though?

A Yes, sir.

Q Was that not your testimony?

A Yes.

Q And could you tell us the approximate day of the week?

A No, sir.

Q What about the approximate time? You said evening.

A Yes.

Q Was it 6, 7?

A No.

Q Was it light or dark?

A It was dark.

Q It was dark?

A Yes, sir.

Q It wasn't 3 o'clock in the morning?

A No, sir.

Q But it was dark, evening, you would say after 8 o'clock, in August?

A After 9 o'clock.

Q After 9 o'clock, but before midnight, wasn't it?

A I would say so, yes.

Q Now, it is your direct testimony that in the latter part of August, in the evening, approximately, between 9 and 12 o'clock at night, that you delivered a package to Ben Tolopka?

A Yes, sir.

Q Mr. Tolopka didn't order that package, did

he?

A From me?

Q Yes.

A No, sir.

Q Somebody else ordered it?

A Yes, sir.

Q And it was your testimony that Mr. Forbrick ordered it?

A Yes, sir.

Q And you came to Mr. Tolopka's house with this package?

A Yes, sir.

Q You had known previous to that that Mr. Tolopka was or had been a police officer, didn't you?

A Yes, sir.

Q You knew that he was a detective for 24 years -- withdrawn -- at least a detective for 24 years and was now retired?

A I didn't know the length of time, no.

Q But you knew he was a retired police officer?

A Yes.

Q You had indicated that you had been previously arrested and convicted for narcotics dealings, is that right?

A Yes, sir.

Q And you were a careful man, were you not?

A I don't understand what you mean by careful?

Q You didn't want to get caught again?

A No.

Q And you were very careful thatyou wouldn't be followed?

A I imagine so.

Q And isn't it a fact that sometimes that you were driving along the highway you would sometimes stop your car and let other cars pass you just to make sure that you weren't followed?

A No.

Q Or you would slow down and let other cars pass you? You wouldn't do that, would you?

A No.

Q You are sure of that?

A Positive.

Q Isn't it a fact that the reason the phone was not in your name was that you were just trying to be careful, that you didn't want to get the phone tapped?

A No, sir.

Q But you were a careful man otherwise, were you?

A I don't understand what you mean by careful.

Q Is it your testimony that having been twice convicted of narcotics you would deliver a package that you purport to be narcotics to a person who doesn't order it who you know to be a former detective in the middle of the night?

THE COURT: Is that a question?

A Isthat a question?

Q Yes.

THE COURT: All right. Read it, would you please, Mr. Reporter.

Record read.)

A I would under those circumstances, yes.

Q Is it further your testimony that even though you had no previous arrangements or telephonic communications with Mr. Tolopka that night that Mr. Tolopka had someone waiting in his basement?

A There was someone there, yes.

Q And that's your testimony?

A Yes, sir.

Q Mr. Tolopka didn't know that you were coming that night to deliver, did he?

A Not that I know of, no. Richie was supposed to go and deliver it.

Q Now, you have been to Mr. Barnaba's home -- I mean Mr. Tolopka's home?

A Yes, sir.

Q On one occasion or more than one occasion?

A More than one.

Q You knew Mr. Tolopka was working at the race track, didn't you?

A Yes, I did.

Q And did you also know that he sold jewelry on a part-time basis?

A I know he sold jewelry. I didn't know if it was part-time, full-time or what.

Q But you knew he sold jewelry?

A Yes, sir.

Q Did you ever buy some jewelry from him?

A I may have.

Q You may have or you did?

A I probably did.

Q Well, didn't you go to his house only this year and order a watch?

A Yes, sir.

Q So you did order it?

A Yes.

Q Now, when you went to his house in what you

say was the latter part of August, 1970 could you describe to me where the basement is?

A Yes, I'll try.

Q Please.

A You walk in, you go in a little ways where the door is right here, you go downstairs. It's off to the side of his dining room.

Q Off to the side of his dining room. Do you have any vestibules you have to pass through?

A I think you do.

Q How many, one or two or three, four?

A One that I recall.

Q One that you recall?

A Yes.

Q If I were to suggest to you two, would that refresh your recollection?

A No, it wouldn't. I was only down there one time.

Q One time in the basement?

A Yes, sir.

Q And that's when the colored man who was sitting in the corner came forward, is that right?

A He was standing, not sitting.

Q He was standing in the corner awaiting your

arrival, right?

A He was waiting. He was there. I don't know if he was waiting for me.

Q You testified in your direct examination that there was another alleged transaction with Mr. Tolopka that I think you said was the following month. That would be September of 1970, would it not?

A It was in October.

Q It was this October of 1970. The early part or later part?

A It was the early part.

Q Could it have been the end of September?

A I don't think so.

Q What fixes the month in your mind?

A I just happen to remember it that way.

Q You delivered a package of cocaine to Mr. Forbrick, is that right?

A Yes.

Q And Mr. Forbrick said it was for Ben?

A Yes, sir.

Q Ben never had ordered it from you, did he?

A Not from me personally, no.

Q Ben never ordered any narcotics from you?

A Personally?

Q Yes.

A No.

Q You only have Richie Forbrick's statement to that effect?

A Yes, sir.

Q You also testified at some subsequent date approximately two or three days later that Mr. Tolopka had returned the package?

A Yes, sir.

Q Well, did he return the package in your presence?

A It was there when I got there.

Q In fact, it was, again, in Richard Forbrick's possession?

A Yes, sir.

Q And at no time did you see it in Mr. Tolopka's possession?

A In his hand, do you mean?

Q Yes.

A No.

Q You subsequently testified to the fact that you had a conversation with Mr. Tolopka?

A Yes, sir.

Q And you were upset that the package had been

opened?

A Yes, sir.

Q And in its place you found some mannite?

A Mannite, yes.

Q You have been dealing with narcotics for upwards of over 20 years on and off. Would you say that's correct?

A I would say so.

Q And your knowledge of narcotics is pretty good?

A Yes, I would say so.

Q And you know cocaine and you know heroin, right? Will you tell me, do you ever cut coke with mannite?

A No.

Q But it is your testimony that you found mannite in the cocaine?

A Yes.

Q And afterwards you refused to deal with Ben Tolopka, is that right?

A Yes.

Q You didn't like him? You had an argument with him and you didn't like him?

A Well, I wouldn't say I didn't like him. It was a bad deal and that was it.

Q But you wouldn't deal with him again?

A Personally? No.

Q Didn't you trust him?

A No.

Q You didn't trust Ben?

A No.

Q He was a police officer for 24 years and you were an ex-con and you wouldn't trust him?

Staying sith the year, for the time being, 1970, did anything unusual happen in the Forbrick family in the year 1970, if you recall?

A Well, I know his son was in a car accident.

Q That's right. That's what I am referring to.

A Yes.

Q He lost his eye?

A Yes, sir.

Q Do you remember when that happened?

A Not exactly, no.

Q Well, in point of time, would you say that the second transaction happened before or after the loss of this eye?

A To the best of my recollection, it was before.

Q So the second transaction, it is your

testimony, occurred before this accident occurred?

A to the best of my recollection, yes.

Q And obviously, therefore, the first transaction would have been even before that?

A Yes, sir.

4B

Q And your recollection is pretty good?

A I would say so.

Q Going back, if I might, did you ever take $300 from Ben Tolopka for any reason?

A Not that I recall.

Q And didn't you have an altercation with Ben Tolopka in November, 1970, at the lot to get the $300 back and you paid him back?

A I didn't own a lot in 1970.

Q No, you worked at the lot, didn't you?

A Yes.

Q That is what I am talking about. I'm sorry.

A Yes. I worked there, yes.

Is there anotherquestion?

Q Yes. Did you have a fight with Ben about some money there?

A No, sir.

Q Mr. Barnaba, isn't it a fact that in 1970 -- withdrawn.

Did you go to California during the year of 1970?

A '66.

Q Between '66 and '70, did you make several visits to California?

A No, sir.

Q Isn't it a fact that in June of 1970 when you had difficulty with someone, you took off andwent to California and didn't return until November of '70?

A Repeat that.

Q Isn't it a fact that in June of 1970 you took off to California and didn't return till November of 1970 and that's why you couldn't pay Mr. Tolopka back the $300?

A No, sir.

Q By the way, Mr. Barnaba, how old are you?

A 43.

Q 43?

A Yes.

Q You are a young man. I'm sorry. I thought you were older.

A Thank you.

Q You are married and your wife's name is Liz?

A Yes, sir.

Q In July of 1972, specifically on the 18th of July of 1972, do you recall receiving $15,000 for one ki of Heroin from an undercover agent?

A I received 15,000. I don't know if he was an undercover agent.

Q And isn't it a fact that on or about October,

1972, you returned $7500 of that?

A Yes, I did.

Q Because you couldn't get any stuff?

A Yes, sir.

Q And then before you could return the rest, you were arrested?

A Yes, sir.

Q That was on November 14th of 1972?

A It was in November. I don't recall the date.

Q If I were to suggest to you November 14th, would I be just about right?

A You may be.

Q At the time that you were arrested, as Mr. Rosenberg indicated, you wanted to do right by yourself, you didn't want to go to jail?

A No.

Q And you were going to come clean and tell all kinds of facts as to what occurred in the past couple of years, is that right?

A Tell -- I didn't understand that question.

Q You were going to tell Rogers various facts or statements or make certain statements to help yourself?

A Yes. Yes.

Q You wouldn't like to him, would you?

A No.

Q And you didn't lie to him, to the best of your recollection, is that right? Is that what you are saying?

A I didn't look at it as lying. I may have held back on him.

Q You may have held back.

Of the persons that you were friendly with, would you say you were friendly with Richard Forbrick than Ben Tolopka, you were closer to Richard Forbrick?

A I would say so.

Q You liked Richard and you didn't like Ben too much?

A I never said I didn't like Ben.

Q Yes, but he wasn't your favorite character to hang around with?

A To hang around with?

Q To be with or to do things with.

A I never had occasion to go with him, no.

Q So if you were holding back, you wouldn't hold back for the benefit of Ben Tolopka, would you?

A I may have.

Q Because you liked Ben better than anybody else?

A No. I just didn't want to get too involved.

Q Too involved?

A Yes.

Q I direct your attention to page 84 in the transcript. The conversation which appears on these transcripts occurred, apparently, between you and Mr.Rogers in 1972, November 14th.

Did you ever tell Mr. Rogers that during the year 1970 you didn't do anything, you had no participation in any narcotics transactions?

A I may have.

Q You may have?

A Yes.

Q Well, would this refresh your recollection, a question on the 4th line:

"Rogers: What did you do in '70?

"Barnaba: '70? I wasn't doing anything."

Did you ever say that?

A I may have. I don't recall. I was confused.

Q Does that refresh your recollection?

A No, it don't.

Q I show it to you. Would it help you if you looked at it?

A If it's there I said it.

Q You were covering up then, right?

A Yes.

Q But on the earlier page, page 77, were you asked questions concerning persons who you sold to?

A I don't recall, counsellor. I was in a state of confusion.

Q I direct your attention to page 77 and show you, sir.

MR. CURRAN: Just for the record, your Honor, I will identify the document that is being referred to now as Government's Exhibit 3550-A for identification.

MR. RICHMAN: That is the exhibit.

A Excuse me. Is that with Mr. Rogers?

Q Yes.

A All right.

Q Were you asked the question, who did you sell to, who were you selling to," and did you give four names?

A I may have.

Q And you said, "That's all the persons I sold to"?

A I don't recall if I said that's all.

Q You just read it. Were you asked this question, you gave the four names and you said, "There are no others"?

MR. CURRAN: I am going to object to that, your Honor.

THE COURT: Come up here, Mr. Richman and Mr. Curran.

tp7 Barnaba-cross

(At the side bar, with the Court, Mr.Richman and Mr. Curran present.)

THE COURT: The transcript I have says, "There are (No?) others (sounds like)."

MR. RICHMAN: Following up on that, you will see that is the only possible answer that could have been in context.

MR. CURRAN: May I suggest, your Honor, that Mr. Richman ask him if he said there were no others at one point, because there is an implication now that the transcript says something that it may or may not say and it seems to me the witness's recollection has not been exhausted on the subject. Maybe he will agree with Mr. Richman, I don't know.

MR. RICHMAN: Mr. Curran, with your innocence, how can I object?

THE COURT: All right, go ahead and do it.

MR. RICHMAN: Withdrawn. I am not going to ask it at all and leave it as it is.

If you want to ask it on redirect, you can.

(In open court.)

BY MR. RICHMAN:

Q Getting back to the time of your arrest on or about November of '72, do you know the circumstances leading

up to your arrest?

A Pardon, I didn't hear that.

Q Do you know the circumstances leading up to your arrest?

A No, sir.

Q Well, did you know that your phone was tapped?

A No.

Q Weren't you informed of that fact by Mr. Rogers?

A No. Later on, you mean?

Q Yes.

A Yes, I recall that.

Q And were you informed that you had been followed?

A I may have been. I don't recall.

Q Were you further informed that pictures had been taken of you walking down the streets, talking to people, et cetera?

A I may have.

Q Not necessarily anything involved in narcotics, but just that they had followed you and they were taking pictures of you?

A Yeah.

Q At the time of your arrest, you indicated that you would cooperate.

Did you at any other time, other than that

debriefing that night, give a full and complete statement to anyone else?

A No.

Q In fact, you made no full statements to the federal authorities until September of 1973?

A Yes.

Q And that full statement that you gave was to a Torrey Shutes, Special Agent of the Drug Enforcement Administration, is that right?

A Yes, sir.

Q And after you gave that statement to Mr. Shutes, did Mr. Shutes make notes, if you recall?

A Yes, he did.

Q He was writing at that time?

A Yes.

Q And he was writing on what appeared to be a sten pad?

A Yes.

Q And did he show you those notes afterwards?

A No.

Q Did you at any time read this finished product?

A No, sir.

Q Well, during that period of time, in September of 1973, would you say that Mr. Shutes accurately took down

what you said?

THE COURT: I don't know if anybody can answer that. He said he didn't read the notes and he said they weren't shown to him. How can he say if they were taken accurately?

MR. RICHMAN: I am sorry. Withdrawn, your Honor.

Q Did Mr. Shutes appear to be writing down things that you said?

A Yes, sir.

Q And at that time, in September of 1973, you never even mentioned Benjamin Tolopka, did you?

A No.

Q Isn't that when you testified against almost everybody else?

A No.

Q Didn't you mention other people?

A Yes.

Q But you never mentioned Ben Tolopka?

A No.

Q You mentioned Richard Forbrick?

A Yes.

Q And you didn't mention Ben?

A No.

Q On or about October of that year, you testified before the grand jury, did you not?

A Yes, I did.

Q And you testified concerning this alleged conspiracy?

A Yes.

Q Did you mention Ben Tolopka?

A No.

Q You didn't talk about him at all?

A No.

Q Well, when for the first time did Ben Tolopka come to your mind?

A Like I said, I was trying to hold back.

Q Oh, even in September of '73?

A Yes, sir.

Q Even just a few months ago?

A I felt that I was involved enough up until now.

Q You didn't mind involving your friends, but your enemy you wanted to leave out?

MR. CURRAN: I object to that as being argumentative, your Honor.

THE COURT: Yes, it is argumentative.

MR. RICHMAN: I am sorry, your Honor, I didn't mean that.

5A Q So it's your testimony that you didn't want to involve Ben?

A I didn't say that. I says I didn't want to involve myself any further?

Q Yourself?

A I felt I was involved enough up until then.

Q How would it differ from everything you testified to thus far?

A Well, later on I testified to everything.

Q What made you change your mind?

A I just figured if I went so far I might as well go all the way.

Q And then you threw Ben in, right, as an afterthought?

MR. CURRAN: Object to that.

THE COURT: Yes.

Q You didn't leave anybody else out, only Ben, right?

A No, there was others left out. I don't recall now.

Q Are there others left out now?

A Not that I recall,no.

Q There were others left out --

A The first time I went into the grand jury, the

first time I appeared, I didn't say everything that I knew.

MR. FISHER: Objection, if your Honor please. This is not responsive.

MR. RICHMAN: May I have the last question read back, your Honor, and have him answer it.

THE COURT: Go ahead. Read the last question.

(Record read.)

Q Is it your testimony that there were other persons that you added to this indictment in December of 1973?

A Yes.

THE COURT: He didn't add them. He may have testified about them.

THE WITNESS: Yes.

THE COURT: If you want to phrase it that way, go ahead.

Q Those others were added as a result of your testimony, is that correct?

A Yes, sir.

Q Can you tell me who they were?

A I don't recall offhand.

Q Anybody sitting around this table?

A Yes.

Q But you don't recall who?

A No, sir.

Q By the way, while we are talking about this table, have you ever seen Ben Tolopka with anybody else in this room?

A No, sir.

Q Did you know if he ever knew anybody else in this room?

A No, I didn't know.

Q But he knew you, didn't he?

A Yes.

Q Both Mr. Rosenberg and Mr. King referred to a handwritten document. Could you tell us to some degree of certainty when that document was written?

MR. RICHMAN: I am referring to --

MR. CURRAN: Government's Exhibit 3549 for identification?

MR. RICHMAN: Yes, whatever you say.

MR. CURRAN: We have several.

MR. RICHMAN: Barnaba's handwritten document.

MR. CURRAN: 3549 for identification, your Honor.

THE COURT: All right. Do you recall when you wrote it.

A Some time in October, November.

Q Can you be a little more specific, please?

A Well, to the best of my recollection, that's when it is.

Q What made you sit down and write it? Was it ever requested by someone?

A No, not really.

Q You just decided to write your autobiography?

A Well, like I say, I was holding back.

Q This was the thing that was going to break the dam?

MR. CURRAN: Object to that, your Honor.

THE COURT: Sustained.

Q This was the complete story?

A Yes, sir.

Q You didn't add anything after this story was complete, did you?

MR. CURRAN: Object to the form of that, your Honor.

THE COURT: No, I will permit it.

Go ahead, answer the question.

A Could you repeat that, counsel?

THE COURT: Was anything added after your preparation of 3549 for identification.

A There were other things added, yes.

Q Would you say that the time you wrote this particular scenario was at the same time that you spoke to Agent Shutes for the second time?

A I spoke to him after that, yes.

Q You spoke to Agent Shutes after you had written out this document?

A Yes.

Q How much after, if you recall?

A A couple of weeks.

Q If I were to suggest to you that you spoke to Agent Shutes on the 29th of November, that would put the date of this document on or about the 14th of November or the 15th, and would you say that is an accurate description of the time you wrote this document?

A I would say so.

Q Thank you very much. So this particular document which you purported to be the full story was written approximately on the anniversary of your arrest, one year later?

A That I wouldn't know.

Q You were arrested on November 14, 1972?

A Yes.

Q And you just testified that you had written this document on or about the 14th or 15th of 1973, and

that was the first time you were going to tell the whole story and be completely honest, right?

A Yes.

Q The whole year that transpired in between you were not being totally honest, were you?

A No.

Q You were lying?

A I don't look at it as lying. I was holding back.

Q By the way, during that whole year of November, 1972, through November, 1973, how were you living, who was paying you?

A Who was paying me?

Q Yes. How did you get money to eat and pay your rent?

A I already testified to that, Mr. Richman.

Q I am talking about November of 1972 through November of1973.

A You mean when I was on the street.

Q Yes.

A I recalled that overthe weekend. I was receivin $150 a week.

Q You were receiving $150 a week?

A Yes.

Q And they allowed you to sell drugs on the street also, didn't they?

A I wasn't selling drugs then, no.

Q You weren't selling drugs?

A No.

Q Were you making any other side money?

A No, sir.

Q You were just subsisting on $150 a week?

A Yes, sir.

Q By the way, at the time that they got you to cooperate, did they tell you that they intended to arrest Liz, your wife, as well for participating?

A I think they did, yes.

Q Isn't that the reason you are testifying, so they won't prosecute your wife? She was never indicted, was she?

A No, sir.

Q That's because you cooperated, right?

A That I wouldn't know.

Q I mean, you are a smart man, you know the streets.

MR. CURRAN: Is that a question? I object. I don't think it's a question.

THE COURT: If it's a question or a comment, one

way or the other, it's sustained. Go ahead.

MR. RICHMAN: Thank you.

Q So the very first time you decided to tell the government about Benjamin Tolopka was November 14 or 15, 1973, just two months ago or so?

MR. CURRAN: I object to that, your Honor.

THE COURT: I will sustain it. It's argumentative.

Q Is that the first time you told the government about Benjamin Tolopka?

A No, I think there was other times.

Q Did anybody ever write that down anywhere?

A It was written down.

Q It was written down?

A Yes.

Q And it was written down by a government agent?

A Yes.

MR. RICHMAN: If the Court pleases, at this time I would request copies of that writing, if such actually do exist.

THE COURT: I understand. I think, however, we can take this outside the hearing of the jury. Let's come over to the side bar.

(At the side bar.)

MR. CURRAN: First, your Honor, I object to these kinds of applications being made in front of the jury.

Second, there is no additional material of a 3500 nature relating to the direct testimony of this witness in any way.

THE COURT: All right. If there is none, there is none.

MR.RICHMAN: You want to put a stipulation on the record before the jury to that effect?

MR. CURRAN: All you have asked him so far is whether he, I think, saw anybody write anything down.

MR. RICHMAN: Any government agent.

MR. CURRAN: Yes. But it doesn't follow that if he did see that -- and I don't know whether he did or not -- that there is 3500 material. It clearly doesn't follow.

MR. RICHMAN: If it concerns the defendant before this bar?

MR. CURRAN: I suggest Section 3500 maybe deserves rereading.

MR. RICHMAN: Are you suggesting, your Honor, in terms of buttressing the testimony of the witness or impeaching his testimony as to whether or not statements were made, which is a prime issue in this case, if he made

such statements we are not entitled to see such statements?

THE COURT: Am I suggesting?

MR. RICHMAN: Is that what the government is saying?

MR. CURRAN: I am thoroughly familiar with the provisions of Section 3500, and I am not suggesting, I am stating that there is no additional 3500 material that I know of with respect to this witness.

MR. RICHMAN: Without question, I would take your representations without doubt. Do you know of anybody else privy to this kind of knowledge?

MR. CURRAN: No one that I know of.

MR. RICHMAN: Will you allow me to go further as to who he might have talked to?

THE COURT: I think that has to come out.

MR. CURRAN: Sure.

(In open court.)

BY MR. RICHMAN:

Q Mr. Barnaba, before we left for the side bar you made reference to the fact that you allegedly told someone about Mr. Tolopka at a different occasion and that this representation or what you told them was written down somewhere. Will you tell us who you spoke to at that time?

MR. CURRAN: Your Honor, for clarity, different

from when?

MR. RICHMAN: Other than November 14, or thereabouts, 1973.

THE COURT: You mean prior thereto.

MR. RICHMAN: Prior thereto, yes.

A I don't think I understand the question fully. When you say writing, I wrote.

Q You wrote it down?

A That's what I'm talking about.

Q When did you write it down?

A Well, my notes.

Q I am saying before these notes, which were November 14, 1973.

A I don't recall.

Q You don't recall now?

A No. I thought you were talking about my notes.

Q So it is your testimony, if I understand, that before November 14, 1973 you didn't mention Ben Tolopka to anyone or write it down anywhere?

A I wrote it in my notes.

Q But that was November 14, 1973. Is that what you are saying?

A Yes.

MR. CURRAN: Your Honor, just for the recotd, could the notes be referred to as Government's Exhibit 3549 for identification.

Q So that is when Ben Tolopka's name first came up, about two and a half months ago?

A In my notes.

Q Yes.

A Yes.

Q Or approximately a month and a half before this case started?

A Yes.

Q And the very first time you testified with relation to anything Ben Tolopka might have said or done or been involved with was December 5, 1973, is that correct?

A You talking about the grand jury?

Q That's right.

A Yes.

Q That was only a little more than a month before this case got started?

A That I went to the grand jury?

Q Yes.

A Yes, sir.

Q To the best of your knowledge, Ben Tolopka was not part of this case until that date?

MR. CURRAN: I object to that, your Honor, at least, to the form of that.

THE COURT: The form is bad.

Q He was not a person who was charged with any crime, to the best of your knowledge, before that date?

MR. CURRAN: I object to the form of that, your Honor.

THE COURT: I think I knew what he is driving at.

Go ahead, answer it. Do you know if Ben Tolopka was charged with any crime prior to December 5th, or thereabouts, when you appeared before the grand jury?

A Not to my knowledge, no.

Q That was the date you first mentioned him to a formal body or grand jury?

A Yes, sir.

Q Yet it is your testimony that he was involved in this alleged conspiracy way back in August of 1970?

A Yes, sir.

Q By the way, do you know a James O'Donnell, a special investigator with the State Drug Enforcement Bureau?

A O'Donnell? Yes.

Q You do know him?

A Yes.

Q He was present during one of your debriefing sessions, was he not?

A I don't know. There was quite a few people present?

Q Isn't it a fact that O'Donnell told you that he was following you one day and you stopped the car and he had to pass you?

A I don't recall that.

Q Isn't it a fact that James O'Donnell described you to your face that you were one of the major narcotics transactors on the East Coast?

A I don't recall that either.

Q By the way, in your handwritten memorandum here, this 32-page document, do you make any reference to that colored man being in the basement when you delivered the

drugs to Ben Tolopka's house?

A In my notes? I don't recall. I don't think so.

Q You don't think so?

A No.

Q That came later, right?

A Yes.

Q I note in your minutes or your memorandum here you mention the name Pete Lepore. Do you know Pete Lepore?

A Yes, I do.

Q You bought a used car lot from Pete Lepore, didn't you?

A No, I didn't buy it.

Q You didn't buy it?

A No.

Q You promised to buy it, didn't you?

A No, sir.

Q Isn't it a fact that you promised to give him $10,000 for a used car lot?

A No, sir.

Q You never did?

A No.

Q Do you owe Pete Lepore any money?

A No.

Q Is he a friend of yours?

A I would say so.

Q Isn't it a fact that as a result of your testimony Pete Lepore was indicted in the state court?

A My testimony?

Q Yes.

A I don't know.

Q An alleged transaction between you, Pete Lepore, Carmine Miranda and John Wertheimer.

A A transaction with me?

Q Did you have a transaction with those people?

MR. CURRAN: Your Honor, there is a question pending, I believe.

THE COURT: Let him answer the first question and then go on to the next.

Mr. Reporter, would you be good enough to read back the first question.

(Record read.)

THE COURT: Answer that one.

A I never testified to anything like that, no.

Q Do you know the name Frank and Alfred Lalli?

A Yes, I do.

Q Are they friends of yours?

A Yes.

Q You like them pretty much?

A I guess so.

Q Did you ever receive narcotics from them?

A From who?

Q From Frank or Alfred Lalli.

A No.

Q You never did?

A No.

Q Isn't it a fact that they stand inside before this court based upon your testimony for alleged narcotics transactions?

MR. CURRAN: Objection to the form of that, your Honor.

THE COURT: No, I will permit it.

Q Please answer the question.

A You said on the basis of my testimony?

Q Yes, your testimony, no one else's.

A No.

Q Mr. Barnaba, is it your testimony that you were not informed that you were to testify at another trial shortly?

A Oh, yes.

Q Against them, right.

A But I haven't testified. You said my testimony.

Q Are you going to testify or are you not going to testify?

A If I have to, yes.

Q But they had no narcotics transactions with you? What are you going to testify to?

MR. CURRAN: Your Honor, I object to this. This is wholly argumentative.

THE COURT: I will sustain it. It is way outside.

Q Were you informed that you will have to testify?

A Yes.

Q Who told you?

MR. CURRAN: Objection, your Honor.

THE COURT: I don't know where we are going, this is so far outside the scope of his direct.

MR. RICHMAN: This is cross, your Honor.

THE COURT: I understand this is cross. I would assume another case will be the problem of another judge and another jury.

MR. RICHMAN: Would your Honor like to take

proof at the side bar as to why this questioning is important?

THE COURT: Sure.

(At the side bar.)

MR. RICHMAN: One of the points of our defense, your Honor, is Mr. Barnaba is buying his freedom by throwing various names into various places.

I mentioned Pete Lepore because he refers to Pete Lepore in his own memorandum. Pete Lepore informed me that he sold him a used car lot for $10,000 and that is why he was named in the indictment.

He refers to Alfred and Frank Lalli and they are charged with narcotics conspiracy and he states that he never received or gave them narcotic drugs?

MR. CURRAN: Your Honor, with respect to Lepore, Pete Lepore is not a defendant in this case.

MR. RICHMAN: Granted.

MR. CURRAN: He has nothing to do wiht this case.

With respect to the second, he is asking Mr. Barnaba to become an expert on the law of conspiracy. It is perfectly consistent that Mr. Barnaba did not deal narcotics with them and yet could still be a witness at their trial. We have any number of people testify-

ing in this case who did not deal in narcotics with the defendants. That is a complete non non sequitur.

MR. RICHMAN: The Lalli brothers are co-conspirators in this case, not in any other case. We are not talking about another case; we are talking about this case.

MR. CURRAN: Regardless of that, it doesn't follow if he is going to testify at a trial against them that he dealt narcotics with them. There are many witnesses in this case who did not deal narcotics and yet --

MR. RICHMAN: That they did not have any narcotics in their possession, that they were not stashers, that they were not somehow in contact with narcotics?

THE COURT: It doesn't much matter. You can offer corroborative proof that people were at particular places at particular times.

MR. RICHMAN: Do you think we could break now?

THE COURT: Yes.

(In open court.)

THE COURT: Ladies and gentlemen, you know I try to run this courtroom by civilized rules.

One of my civilized rules is at 12:30 we break for lunch.

Mr. Marshal, would you escort the jury to their room. Everybody else remain seated, please.

(The jury left the courtroom.)

MR. SIEGEL: Your Honor, could we make inquiry who that lady was who just walked in the back?

THE COURT: I believe she is a deputy marshal. They have to have a female with the jury at all times.

--- --- All right. Let's resume at 2 o'clock, Mr. Richman and Mr. Curran, I think maybe I will see you both in the robing room right now.

(In the robing room.)

THE COURT: Let's finish up where we were. There was no need to keep everybody around while we were going at it at the side bar. That is why I decided to let everybody go.

It is your claim -- let me see if I have this correct -- that you want to bring out the fact that this man will testify against other people who are his friends in other cases involving narcotics, which I think you have done already, and the reason for this is to show that he will put his friends in and

therefore this man that you represent, who you claim is an enemy, he would throw him in anyway. Is that basically --

MR. RICHMAN: Part of it.

THE COURT: In other words, motive?

MR. RICHMAN: Absolutely.

THE COURT: You have in so far that he is going to testify against the Lallis. The question now is what he is going to testify to, basically. That I don't think we ought to get into.

MR. RICHMAN: No, I wouldn't go into that at all.

THE COURT: Does that resolve the last problem that we had out there? I think it does.

MR. CURRAN: I think it does. My specific objection I think was to the followup question which was asked, "Who told you that," about testifying.

MR. RICHMAN: That I want an answer to, who told him he was going to be testifying.

THE COURT: I assume some assistant United States attorney did.

MR. CURRAN: Your Honor, the Lallis are co-conspirators. I wouldn't object to that question, to that one question.

THE COURT: All right. Do you have anything else in this area to go into?

MR. RICHMAN: In this area, no.

THE COURT: I am wondering how much longer you will be after lunch?

MR. RICHMAN: Fifteen minutes. Actually I wanted the time during lunch to see if there was anything I left out.

THE COURT: All right. I will see you at 2.

(Luncheon recess taken.)

AFTERNOON SESSION

(2:00 p.m.)

(In open court; jury not present.)

THE COURT: Just one matter which I forgot to rule on this morning. I don't think it makes any difference.

The state grand jury minutes testimony by Mr. Barnaba was turned over in toto. I understand pages 30 through 40 have been provided to the defendants.

I have gone through the rest of it. It has nothing to do with this case. However, I am directing the clerk to mark the entire transcript as a court's exhibit, which I guess is 61, and seal it.

There was an application, also, on Friday in connection with a handwriting exemplar. I will direct that the handwriting exemplar, or hand printing, I guess is what you want, will be given.

Also there is another thing which was left open. Mrs. Rosner, I asked you and Mr. Phillips to talk to Assistant District Attorney Miller in connection with the list of tape recordings. You remember somebody asked him if he would check through it and I said, "Do you mind if I leave?" so I directed him --

MRS. ROSNER: Your Honor, I think, if my

recollection serves me, Mr. Miller was not able to determine from the three pages which I provided him with that comprised all the materials which were turned over to the federal government and he has to go back to his office to make that comparison.

To my knowledge, there has been no final response; at least it has not been directed to me.

THE COURT: Do you know anything more on that, Mr. Phillips?

MR. PHILLIPS: No, your Honor.

Your Honor, just to clear up the question of the handprinting exemplars, it is the government's request -- I don't know whether we made it on Friday or not -- that Mr. Inglese handprint the name Frank Stassi, Stassi spelled with two s's, on blank pieces of paper that we will provide Mr. Inglese for a total of 20 times.

THE COURT: Come on. Why do you need 50 times for?

All right.

Unfortunately, two copies of the state grand jury proceedings were supplied to me, but I can only find one at this point.

Mr. Clerk, do you know where they are?

THE CLERK: No, your Honor.

THE COURT: Seal this one, at least, as 61. If we find the other one it will be 61A.

(Court's Exhibit 61 was marked for identification.)

MR. DOWD: Your Honor, if I may, I think it was Thursday evening that Mr. Phillips indicated Mr. Cassella, a police officer, would testify concerning three alleged sales Mr. Russo made to him in January of 1973. I pointed out to the court that was the first time I was aware in this case that such testimony would be offered in respect to those particular incidents, and I pointed out to the court that on those three occasions Mr. Barnaba was present and in fact wore a Kel transmitting device, and I made a request of the court that any records or writings or testimony that Mr. Barnabz might have given with respect to those three incidents would be part of this case since although he will not testify or has not testified on direct concerning it, it will come up. I think your Honor said that I would get such statements.

THE COURT: Yes.

MR. DOWD: I haven't gotten them.

THE COURT: I understood when there was direct testimony as to that you would get it, unless we

have the situation again where we have taken recordings that are untranscribed.

Is that the situation?

MR. DOWD: We have tape recordings --

THE COURT: Are they untranscribed?

MR. PHILLIPS: Yes. There are tape recordings where Russo's name appears and we have turned over every tape recording that has come into our possession where Mr. Russo's name appeared.

MR. DOWD: I am not talking about that.

THE COURT: He is talking about three specific incidents in January of 1973.

MR. PHILLIPS: If he is talking about Mr. Barnaba, we have also turned over to counsel either by way of making available in the first week of January or just the other day we turned over to Mr. Fisher and Mrs. Rosner's representative, Mr. Oppenheimer, all remaining tapes that Mr. Barnaba's name appears.

MR. DOWD: I am talking about post-grand jury testimony concerning those three occurrences or debriefings or statements made.

THE COURT: If Cassella is going to testify and there will be 3500 material in connection with Cassella's testimony it will be turned over.

Are we all set to go? Can we hold our applications until after or does it have to be gotten out of the way?

MRS. ROSNER: No, it can be heard later, but I do want to bring it up.

THE COURT: All right.

Mr. Clerk, bring in the jury.

J O H N B A R N A B A resumed.

CROSS EXAMINATION CONTINUED

BY MR. RICHMAN:

Q Mr. Barnaba, just before we broke I asked you a question concerning the friends of your Frank and Alfred Lalli, and I asked you who told you you would have to testify. I asked you that question.

Would you please respond to that question?

A Who told me?

Q Yes.

A Mr. Cooney.

Q Mr. Cooney, a U. S. attorney?

A Yes, sir.

Q Thank you.

Let me take you back a moment again, back to the night of this transaction with Mr. Tolopka, this alleged transaction.

You stated when you got there, although they were not expecting you, you met a colored man in the basement, is that right?

A Yes, sir.

Q You mean a black man, is that right?

A Yes, sir.

Q Do you know his name?

A No, sir.

Q Do you see him in the courtroom here?

A No.

Q That was your first transaction with the person you alleged to have gotten the drugs from, is that right?

A Yes, sir.

Q Did you open the package?

A No, sir.

Q You just delivered it?

A Yes, sir.

Q So you really didn't know, except for the writing that allegedly was on the cover, what was in the package?

A Well, the man opened the package down the basement.

Q The man opened the package?

A Yes, sir.

Q You didn't mention that in your summary?

A No.

Q Isn't it a fact that that was an afterthought?

A I remembered --

Q The government told you that they couldn't prove it was narcotics unless you had something tied in and that's how you produced that man who allegedly opened up this package?

A No, sir.

Q You didn't write about it, did you?

A No. I remember --

Q You didn't tell Agent Torrey Shutes about it?

A No, sir.

Q You just remembered it now?

A Later on.

Q How much later, after November?

A I guess so.

Q Well, you wrote this in November, right?

A Yes.

Q And you didn't say anything about it then?

A No.

Q And you testified in December and you didn't say

anything about it then?

A No.

Q So some time in January, when they couldn't show any other way to have narcotics, is that when you thought about it?

A No, sir.

Q Well, when did you think about it?

A When I was writing my notes, afterwards.

Q Afterwards?

A Yes.

Q But you testified after this, didn't you?

A When I was talking with Mr. Curran.

Q When did you talk to Mr. Curran?

A One of the times that we were discussing my testimony.

Q Well, when? Before you testified before the grand jury or after?

A After.

Q After you testified?

A Yes.

Q Some time just last month, right?

A Possibly. I don't recall.

Q You only testified before the grand jury a month before last?

A Yes.

Q With relation to Benjamin Tolopka, at least?

A Yes.

Q Now, when you testified before the grand jury, you only mentioned this transaction which occurred in August, right?

A I don't recall that.

MR. RICHMAN: Does someone have a copy of the testimony before the grand jury in December? I misplaced mine.

Q Mr. Barnaba, I show you your testimony before the grand jury.

Does that refresh your recollection as to what you testified to before that grand jury in December, 1973?

A Yes.

Q And isn't it a fact that you only testified to an alleged transaction that occurred in August, the latter part of August, 1970, with relation to Benjamin Tolopka?

A Yes.

Q You made no reference to any other alleged transactions that occurred a month or two later?

A I don't understand. What do you mean --

Q Well, you didn't mention anything else about

the time he returned the narcotics to you there, did you?

A No.

Q When did you come up with that part of the story

A I told you before, when I was going over my testimony with Mr. Curran.

Q You are sure it wasn't when Mr. Curran or someone told you that Benjamin Tolopka couldn't have possibly have been where you say he was in August of 1970?

A No, sir.

Q And isn't that your way of getting around his story?

A Yes, sir.

Q Now, it is your testimony, is it not, that the very first time you thought of introducing Benjamin Tolopka as a party to this particular case was some time in December when you wanted to come clean?

MR. CURRAN: I object to the form of that questio your Honor.

THE COURT: Yes. Reframe the question, please, Mr. Richman.

MR. RICHMAN: Thank you, sir.

Q The very first time you mentioned Benjamin Tolopka was in November of this year or within the last four months?

THE COURT: November of last year.

Q November of 1973.

A Yes, sir.

Q You hadn't mentioned Benjamin Tolopka before that because you didn't want to get involved, right?

A Yes.

Q Isn't it a fact that in May of this year you went to Mr. Tolopka's house wired up --

A Yes.

Q -- to try to get something on him, right?

THE COURT: Do you mean May of 1973?

MR. RICHMAN: May of 1973. I'm sorry.

Q Right.

A Yes.

Q So it just didn't occur to you in November, it occurred back in May?

A What occurred?

Q Well, your thinking of Ben Tolopka as a possible defendant.

MR. CURRAN: I object to the form of that, your Honor.

THE COURT: Yes, I will sustain the objection.

The question was in May you went to his house, is that right, Mr. Barnaba?

THE WITNESS: Yes, yes, your Honor.

Q Isn't it a fact the reason you went to his house was to ask Ben to get a watch for your daughter?

A Yes.

Q And you recall calling up on the telephone?

A Yes.

Q And asking him about that watch?

A Yes.

Q And didn't you try to refer to the watch as stuff?

A No.

Q No?

A No, not that I recall.

Q Well, do you remember those phone conversations being recorded, sir?

A They were recorded, yes.

MR. RICHMAN: Referring to C 361 and C 388 recordings, your Honor.

THE COURT: Wait a second.

Can we have 35- whatever it is?

MR. RICHMAN: It is now 3502 at this point, your Honor.

THE COURT: All right. Can I have a copy of whatever you are returning?

MR. RICHMAN: I don't have a transcript, your Honor, I just have the tape itself.

THE COURT: Does anybody have a transcript?

MR. RICHMAN: No transcripts were made, sir.

THE COURT: All right.

Q And isn't it a fact that all you were talking about was a watch?

A Yeah.

Q And didn't you try to say, "Can you give me that stuff"?

A I don't recall.

Q And isn't it a fact that Benjamin Tolopka said, "I haven't gone down to the jewelry exchange," and that's the only reason why you didn't introduce that as evidence against Mr. Tolopka in this case?

MR. CURRAN: I object to that, your Honor.

THE COURT: Sustained.

Q Mr. Barnaba, isn't it a fact that this entire case as against Benjamin Tolopka was made up toget even with him?

A On my part?

Q Well, certainly not on mine.

A No, sir.

Q Thank you, Mr. Barnaba.

MR. RICHMAN: No further questions, your Honor.

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2A

THE COURT: Mr. Ellis.

CROSS EXAMINATION

BY MR. ELLIS:

Q Mr. Tolopka, we have met before, haven't we?

MR. CURRAN: Mr. --

MR.ELLIS: Excuse me.

THE COURT: Mr. Barnaga.

Q Mr. Barnaba, we have met before, haven't we?

A I believe so,yes.

Q When was that, sir?

A Upstairs, a few weeks back, I think.

Q Would you describe what transpired at that meeting, if you will?

MR. CURRAN: Objection, your Honor.

THE COURT: Sustained.

Q Where do you mean when you say upstairs?

A In Mr. Curran's office, the library.

Q Adjacent to Mr. Curran's office, is that correct

A Yes, sir.

Q Did I ask you to discuss with me the facts of this case?

MR. CURRAN: Objection, your Honor.

THE COURT: Sustained.

Q Did I try to talk to you about this case?

MR. CURRAN: Objection, your Honor.

THE COURT: Same question, same ruling.

Q Did anybody advise you not to talk to the defens attorneys in this case?

A No, sir.

Q Did anybody advise you that you had a right not to talk to the defense attorneys in this case?

A No, sir.

Q Did you discuss the facts of this case with the defense attorneys?

MR. CURRAN: Objection, your Honor.

THE COURT: That is the same question. The same ruling.

Q Mr. Barnaba, you testified this morning in substance about how important your freedom was to you, is that correct?

A Yes.

Q You recall that you told this Court and jury of your conversation with Mr. Rogers when you said, "I don't want to go to jail, I'll tell you that, I can't take it, I can't take it," is that correct?

A Yes.

Q Do you recall on that occasion Mr. Rogers saying to you that as the prosecutor he had a lot to say about

the charge that would be brought against you?

A No.

Q Mr. Barnaba, I direct your attention to page 68 of Government's Exhibit 3550-A, and in particular, the place where I am indicating, and ask you whether that refreshes your recollection.

A Yes.

Q In fact, Mr. Rogers did say that he would have an awful lot to say about the charge that would be brought against you, didn't he?

A Yes.

Q I ask you whether you recall him telling you the following, that he could bring an A felony against you, and "A is 50 to life, that's what you are, any time that you sell more than a pound, all the times that you did, that I know about and that you know about, you are subject to 50 to life, we put some teeth into the state law recently," do you recall that?

A I recall the 50. I don't recall the life.

Q Do you recall him also saying it could be a B felony, B is just 25?

A Yes.

Q And a C felony, a C is just 15?

A Yes.

Q And a D felony and a D is just seven?

A Yes.

Q And an E felony and E is just four?

A Yes.

Q Mr. Barnaba, as you sit here today in this courtroom the only charge pending against you is an E felony in the state court, a maximum of four years, is that correct?

A Yes.

Q Actually, Mr. Barnaba, you didn't need Mr. Rogers to tell you that you faced a long time in jail with your narcotics record, did you?

A I don't understand the question.

Q You knew that if Rogers decided to prosecute you would be subject to many, many years in jail, without him spelling it out for you, didn't you?

A Well, I'm not a lawyer. I don't know, no.

Q Whether you are a lawyer or not, did you know that or not as a three-time narcotics violator you would be subject to a very extended term in jail?

A Yes.

Q You don't have to be a lawyer to know that, do you?

A I guess not.

Q Did you tell Mr. Rogers, "You want a guy in,

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I'llwork tha guy in"?

A Yes.

Q Did you tell Mr. Rogers, "I'll do anything you want me to"?

A Yes.

Q And did they say to you, "You'r asking us to give up a prosecution that we really want to bring," meaning a prosecution of you, Mr. Barnaba?

A I recall that, yes.

Q And did you say to them, "You can't put me in this case. If you do, forget about it"?

A I don't recall that.

Q I direct your attention to page 147 of 3550-A, where my finger is, and ask whether that refreshes your recollection.

A Yes.

Q So you did say, Mr. Barnaba, "You can't put me in. If you do, forget about it"?

A Yes.

Q When you said"put me in," what did you mean? You meant this case, didn't you?

A Arrest me.

Q "Youcan't arrest me. Forget about it if you arrest me"?

A Yes.

Q At the end of all that you decided to cooperate?

A Yes.

Q And you did certain things pursuant to that cooperation, is that correct?

A Yes, sir.

Q Let's see if we can understand what you did.

On November 14, 1972, you were debriefed by Mr. Rogers?

A Yes.

Q And that debriefing was on tape?

A Yes.

Q Did you have subsequent interviews with members of Mr. Rogers' staff?

A Yes.

Q How many?

A I don't know how many.

Q Did you see whether they were taking notes?

A No.

Q You didn't see or they were not taking notes?

A No.

Q Which is it?

A Weren't taking notes.

Q You mean other than the single occasion when you

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were on tape the New York County District Attorney's staff didn't write down anything you said?

MR. CURRAN: Object to the form of that question, your Honor.

THE COURT: I will sustain the objection.

Q How many times after November 14, 1972, did you meet with members of the New York County District Attorney's staff?

A Quite a few times. I don't recall just how many.

Q More than 20?

A I would say so.

Q More than 50?

A No, I don't think so.

Q More than 30?

A I really can't say. I don't know.

Q Is 30 a ballpark figure?

A I would say so.

Q You also agreed to go on to the streets to arrange contacts with suspected narcotics violators, is that correct?

A Yes, sir.

Q And on those occasions that you were to go out on the streets you wore either a transmitting or recording device, is that correct?

A Yes.

Q Mr. Barnaba, I would like to know how the persons that you were going to approach were selected? Did you suggest them?

A No.

Q Did Mr. Rogers and members of his staff say, "Go up to X while you are wired for sound and see what you can get"?

A No.

Q How were those persons selected?

MR. FISHER: Objection, if your Honor please. May we approach --

THE COURT: Yes, I think we ought to.

(At the side bar.)

MR. FISHER: If your Honor please, I object to the question because it may produce an assortment of hearsay as to what was told to him about why so-and-so was being chosen to be tape-recorded, all of which would be inadmissible speculation and suspicion on the part of the officers.

THE COURT: Mr. Ellis, I am telling you I think it's an extremely dangerous thing from your point of view.

MR. ELLIS: He never --

THE COURT: The reason that Mr. Curran is not

objecting to it I assure you is not because it is going to help you.

MR. ELLIS: I think it's going to help me for this reason, Judge:

I am not asking for any individuals. He is going to say, "The people we spoke to were suspected narcotic violators," or presumably something like that, and my next question is going to be, "Did you ever talk to Mamone," and the answer to that should be, "No."

MR. FISHER: I don't share Mr. Ellis's high hopes, your Honor.

THE COURT: I don't, either.

MR. ELLIS: I will withdraw it.

THE COURT: I just think it's so dangerous --

MR. ELLIS: I will withdraw it.

THE COURT: You read from page 68 of 3550A?

MR. ELLIS: Yes.

THE COURT: The transcript that I have, which is the official exhibit, does not read exactly the way you read it.

It's my belief that the way you read it is the way it was said because it is the only way that makes sense. Does everybody agree to stipulate to change the thing that way?

MR. FISHER: Yes, your Honor.

MR. CURRAN: Yes.

MR. ELLIS: I didn't notice it.

MR. CURRAN: Your Honor, on that, I assume that it may have been said the way it reads in the transcript.

THE COURT: But it was wrong.

MR. CURRAN: It would appear that if it was said that way it was in error. Nonetheless, I can't concede that it wasn't said that way.

MR. ELLIS: The witness did testify the way Mr. Ellis read it is the way he remembers it being said.

MR. CURRAN: The record speaks for itself.

MR. ELLIS: I only asked him if it refreshed his recollection. He said that's right.

THE COURT: It is the only way it makes sense.

(In open court.)

MR. ELLIS: Your Honor, I will withdraw the previous question.

THE COURT: All right.

BY MR. ELLIS:

Q Mr. Barnaba, can you approximate the number of times that you went out onto the streets wired for sound, so to speak?

A No, sir.

Q Was it a substantial number, and by that I mean more than 20?

A I would say so.

Q Over what period of time were you going onto the streets wired for sound?

A From November till about September.

Q Can you give us the years?

A '72, November, '72, to about September, '73.

Q During that period did you ever speak to Angelo Mamone while wearing a recording or transmitting device?

A No, sir.

Q In addition to the previous items of cooperation to which you referred, did you also speak to federal agents?

MR. CURRAN: Can we fix a time, your Honor?

Q Any time, about this case.

THE COURT: I will permit it. Go ahead, answer it.

A From when to when?

Q From the beginning of time until the day you are sitting here, did you ever speak to a federal agent about the facts of this case?

A Yes.

Q When was that?

A In September.

Q Of?

A '73.

Q Who was that federal agent?

A Mr. Torrey Shutes.

Q How many times did you meet with Mr. Shutes?

A Three or four times, maybe more.

Q Was it more?

A Yes.

Q How many more?

A I would say about five or six times all told.

Q Maybe more?

A No.

Q On each of these occasions did Mr. Shutes take notes?

A Yes.

Q Did you meet with any federal agent other than Mr. Shutes?

A No.

Q Never?

A No.

Q Did you speak to the United States marshals about the facts of this case?

A No.

Q Did you meet with Mr. Phillips?

A Yes.

Q How many times did you meet with Mr. Phillips?

A In that period of time?

Q Any period of time.

A Eight or ten times, maybe.

Q For how long a period of time on each of these occasions did you meet with Mr. Phillips?

A An hour or two.

Q Did Mr. Phillips take notes?

A Yes.

Q Did you meet with Mr. Curran?

A Yes.

Q How many times did you meet with Mr. Curran?

A The same amount of times; maybe a little more

Q How many was thast, sir?

A Eight or ten times.

Q How long were each of those sessions with Mr. Curran?

A Two hours, three hours.

Q Did Mr. Curran take notes?

A Yes.

Q In addition to these interviews and debriefing sessions you also testified before a New York State grand jury, is that correct?

A Yes.

Q And you testified before a federal grand jury on two occasions, is that correct?

A Yes.

Q And you testified on direct examination in this court last week, is that correct?

A Yes, sir.

Q At this stage I presume that you have told every-

thing that you know about these defendants, is that correct?

A Yes.

Q At this stage you have held nothing whatever back, is that correct?

A Yes, to the best of my knowledge.

Q Do you think you might have held something back?

A No.

Q You are quite confident that you did not?

A Yes.

Q I left something out. You also prepared a written statement, didn't you?

A Yes.

Q A 21-page document to which we had rather extensive testimony this morning?

MR. CURRAN: I think it is 33, your Honor.

THE COURT: It is 33 what, pages?

MR. CURRAN: Yes.

THE COURT: All right, fine.

MR. ELLIS: I think my copy is missing some pages, Judge.

THE COURT: Either that or you had the new math.

MR. ELLIS: No. It looks like ordinary Arabic numbers, 1 to 21.

THE COURT: All right.

BY MR. ELLIS:

Q You testified, Mr. Barnaba, that you purchased narcotics from three individuals from 1969 until the present, is that correct?

A Yes.

Q Loria, Lessa and somebody else, is that correct?

A Yes.

Q Did you ever purchase narcotics from Angelo Mamone?

A No.

Q Do you have any personal knowledge of Angelo Mamone buying narcotics from anybody?

A No.

Q To the best of your personal knowledge, did you ever sell narcotics to Angelo Mamone?

A No, sir.

Q To your personal knowledge, did Angelo Mamone ever possess a narcotic drug?

A No.

Q To the best of your knowledge, did Angelo

Mamone ever engage in a narcotics transaction?

A No.

Q Do you recall certain testimony that you gave the other day, Mr. Barnaba, to the effect that one Patty told you that Mamone was DiNapoli's partner?

A Yes.

Q Who is Patty?

A Pat Dilacio.

Q What business is he in?

A I don't know.

Q A friend of yours?

A I met him.

Q Mr. Barnaba, you have no personal knowledge that Mamone is DiNapoli's partner, do you?

A Other than what I heard.

Q Of your own knowledge, do you know whether Mamone is DiNapoli's partner?

A No.

Q You don't know whether DiNapoli has a partner, do you?

A No.

Q You don't even know DiNapoli, do you?

A No.

Q For all you know, Mr. Curran, Mr. Ellis or Judge

Duffy could be DiNapoli's partner, right.

MR. CURRAN: Objection, your Honor. At least, for Mr. Curran, I object.

THE COURT: On behalf all three, the objection is sustained.

MR. ELLIS: I don't join in the objection.

BY MR. ELLIS:

Q Mr. Barnaba, didyou ever try to buy a narcotic drug from Mr. Mamone?

A No.

Q Let me refresh your recollection. Didn't you on one occasion approach Mamone and ask him to sell you a drug?

A Not that I recall, no.

Q Didn't he tell you to go to hell, in effect, that he is not in that business?

A No, sir.

Q Never happened?

A No.

Q When did you first meet Mamone?

A About '69 or '70.

Q Was this before or after you got out of jail?

A No, after I got out of jail.

Q Where did you meet him?

A At the club, Beach Rose.

Q Was your first meeting with Mamone one of the occasions to which you previously testified?

A Yes.

Q So that would be very late in '70, is that correct?

A November.

Q That's pretty late.

Do you recall an occasion when you approached Mr. Mamone -- his nickname is Butch, isn't it?

A Yes.

Q -- and you heard that a Butch was going away and you said to Mr. Mamone, "What are you doing with your narcotics business?" Do you recall that?

A No.

Q It never happened, did it?

A No, not that I recall.

Q But it could have happened?

A Could have.

Q And you were told, "You must be out of your mind, I don't have a narcotics business," or words to that effect?

A Never recall that, no.

Q Could that have happened?

A I'd remember it.

Q Is it your testimony that it did not happen?

A Yes, sir.

Q Mr. Barnaba, you testified about some rather extensive dealings with Richard Forbrick.

A Yes.

Q Are you still friendly with Forbrick?

A I haven't seen him in quite a while.

Q Do you know anything about the state of his health?

A I know he had a stroke, yes.

Q He had a severe stroke, didn't he?

A Yes.

Q A disabling stroke?

A Yes.

Q Do I understand that your testimony is that Forbrick and Mamone were known to each other?

A Their wives knew one another, yes.

Q You don't say that Mamone knew Forbrick?

A I don't know if he ever met him or spoke to him, no, I couldn't say that.

Q Or that Forbrick knew Mamone?

A No.

Q Yetyou said that Mr. Mamone vouched for Forbrick? He said: It's safe to bring this guy into this den of narcotics iniquity because my wife knows his wife? Is that your testimony?

A Yes.

Q That's your testimony.

But in any event, it was you to whom Mr. Forbrick went when he wanted narcotics, isn't that correct?

A Up to that period of time, yes.

Q It took six months of negotiation before you started to supply Forbrick with narcotics, is that correct?

A It's possible, yes.

Q Let me refresh your recollection.

A Yeah, it was a six-month period; five or six

months, yeah.

Q You never heard that Forbrick went to his wife's good friend Mamone for narcotics, did you?

A Not to my knowledge.

Q You never heard that?

A No.

Q This Forbrick was a real good friend of yours, you knew where he went for his stuff, he went to you?

A As far as I know.

Q And nowhere else, as far as you know?

A I wouldn't say that.

Q Do you know that he went elsewhere?

A No.

Q You also testified about an incident when Mamone counted some money in a club, didn't you?

A Yes.

Q Can you fix a time when that incident occurred?

A What do you mean by time?

Q A date.

A No.

Q Can you fix a month?

A Yes.

Q Would you do so, please?

A November.

Q Of? What year, sir?

A '70.

Q Was it late or early November?

A I'd say late.

Q Was it before or after Thanksgiving?

A I don't recall.

Q You agree with me, don't you, that Thanksgiving is the last Thursday in November, or was in 1970?

MR. CURRAN: Objection. Objection. I won't agree with that, your Honor.

MR. ELLIS: It was in 1970, Mr. Curran.

THE COURT: Don't ask the witness to agree with you.

To tell you the truth, I would have to go look it up myself.

MR. ELLIS: Maybe he can tell us, Judge.

THE COURT: All right.

Q Do you know whether this counting incident was before or after Thanksgiving?

A No, I don't know.

Q Do you know what time of the day it was?

A Afternoon.

Q Afternoon?

A Yes.

Q About what time?

A Around late afternoon.

Q What time does that mean to you, sir?

A Four or five o'clock.

Q And who was present on that occasion?

A Just him and myself.

Q Just the two of you?

A Yes.

Q Are we talking about the same incident, this money-counting incident?

A Yes.

Q Mamone was present, wasn't he?

A Yes.

Q Let me see if I can get the setting.

You walked into the club with what?

A With money.

Q In?

A A bag.

Q How much money?

A Pardon?

Q How much money was in that bag?

A 5500.

Q And where was Gigi at the time?

A Behind the bar.

Q And Mamone?

A Standing to the side.

Q How far to the side?

A Two,three feet.

Q From?

A The bar.

Q And how far from Gigi?

A I just says two,three feet.

Q From Gigi?

A Yes, from the bar.

A I thought I heard you say two to three feet at the bar.

A From the bar. Gigi was at the bar.

Q And was he standing directly with Mamone?

A No.

Q Was he down the bar away from Mamone?

A Behind the bar, yes.

Q And how far down the bar from Mamone?

A No. The bar is here, he was standing behind it and Mamone was off to the side (indicating).

Q How far off to the side? That is exactly what I am trying to get at.

A Two to three feet..

Q Did Mamone have a drink in front of him?

A No.

Q Did Gigi have a drink in front of him?

A Not that I recall, no.

Q Describe what happened, sir.

A I took out the money, he started to count it and he called Butchie over to help count the money.

Q That's it?

A Yes. I said it was my money, I should count it. That's about it.

Q Now, you also testified, Mr. Barnaba, about an incident involving a gentleman by the name of Burke.

A Yes.

Q Do you know Burke's first name?

A No.

Q Where were you employed when you first met Burke?

A Jimmy's Used Cars.

Q Where is that, sir?

A Gunhill Road and Boston Road.

Q In the County of the Bronx?

A Yes.

Q Is Jimmy's Used Cars still in existence?

A So far as I know, yes, sir.

Q And describe the circumstances of your

meeting with Burke, your first meeting with Burke.

A He came there and he asked for me. When he spoke to me he says he wanted an eighth of --

Q Finish your answer, sir.

A I says who sent him, and he said Richie sent him.

I says, "Well, I have to find out."

I got on the phone and I asked Richie if he knew him and Richie said yes, he did.

Q Did Richie say anything else?

A No, not that I recall.

Q Did you ask Richie whether he was safe to deal with?

A Well, he says he knows him. I assume it's safe.

Q What time of year was it that you first met Mr. Burke?

A It was in the summertime.

Q How was he dressed when you met him?

A You mean what he was wearing?

Q Yes, sir, that's what I mean.

A He had a shirt and pants on.

Q No coat or jacket?

A No.

Q What kind of car was he driving?

A An ElDorado, yellow one.

Q Late model?

A '69.

Q Mr. Burke did not go to Mr. Mamone for drugs, as far as we know, he came to you, is that correct?

A Yeah.

Q And isn't it a fact, Mr. Barnaba, that in May of 1971 Mr. Burke was out on bail on a homicide charge?

A So I heard.

Q Who did you hear it from?

A Butch Mamone.

Q It's the truth, isn't it?

A I imagine so.

Q Do you know where Mr. Burke is today?

A No, sir.

Q He's dead, isn't he?

A This is the first I'm hearing about it.

Q Well, you probably are going to hear some more about it.

MR. CURRAN: Is that a auestion, your Honor?

MR. ELLIS: It's an observation, your Honor.

MR. CURRAN: I move to strike the observation, your Honor.

THE COURT: All right.

Q In any event, Mr. Barnaba, there came a time when you got some narcotics that didn't quite meet with Mr. Barnaba's approval, is that correct?

MR. CURRAN: I object to that, your Honor. I think you misspoke, Mr. Ellis.

THE COURT: I think you did.

Q Mr. Burke's approval.

THE COURT: All right.

A Yes, sir.

MR. ELLIS: I am prone to do that.

Q How did you learn that Mr. Burke wasn't too happy with the drugs you supplied for him?

A He went back on the lot looking for me.

Q You weren't there, were you?

A No.

Q Incidentally, what were your usual hours of work at Jimmy's lot?

A In the summer?

Q In May and June and July and August of 1971.

A Ten in the morning till about 7 at night.

Q Did you sign in?

A No.

Q Did you punch a clock?

A No.

Q How many other employees were there?

A I was the only one.

Q And was Jimmy himself there every day?

A Yes, sir, most of the -- not every day, but most of the time.

Q But in any event, he was there the day that Mr. Burke came back to the lot, wasn't he?

A Yes, sir.

Q Did Mr. Burke come back alone?

A No, he was with someone else.

Q Do you have any description of this other person?

A No. I wasn't there.

Q Tell us what happened.

A Well, from what Jimmy told me, they went there looking for me and put a gun to his head.

Q Did they say anything?

A They wanted to know where I was.

Q Did he tell them?

A No. He says he didn't.

Q And that was the last time you went back to

that log, wasn't it?

A Yes, sir.

Q You were plenty scared, weren't you?

A Yes.

Q I don't blame you.

Did you carry a gun during that period, Mr. Barnaba?

A No, sir.

Q Did there come a time when these gentlemen showed up at your house?

A Yes.

Q How much after the visit to Jimmy's lot was that?

A few days.

Q How many?

A Two or three.

Q Were you home when they arrived?

A No.

Q Who was home?

A My wife.

Q Anyone else?

A My mother-in-law was downstairs.

Q Were your children home?

A I don't think so.

Q How old are your children today, Mr. Barnaba?

A One is 20, one is 22.

Q And describe to us what happened at your home when Mr. Burke and his friend arrived.

A Well, I don't know what happened, I only know what I was told.

Q Well, didn't you say that they kicked up a ruckus? Did you testify to this court and jury they kicked up a ruckus?

A That's what I was told, yes.

Q Were you told specifically what they did?

A No.

Q Were you told whether they showed a gun?

A No.

Q Were you told whether they threatened anybody's life?

A No.

Q You were just told that these guys came around and they kicked up a ruckus and that was it, correct?

A Yes.

Q Did you ask what happened?

A No.

Q Didn't ask what they said?

A No.

Q Didn't ask what they did?

A No.

Q But you got your wife and family out of that house, didn't you?

A Because I knew what it was about, yeah.

Q And you knew that these men were out to commit murder?

A Well --

Q Didn't you?

A I know they were looking for me. I don't know if they were going to commit murder.

Q You thought it was a distinct possibility?

A It's possible.

Q You weren't about to find out, were you?

A No.

Q Before we go on with this exciting narrative, Mr. Barnaba, let me backtrack a moment to the time when you gave the drugs to Mr. Burke.

Do you recall what day of the week that was?

A No, sir.

Q Was it a weekday?

A Yes, sir.

Q Regular work day?

A Yes.

Q A day at which you arrived at Jimmy's lot at what time?

A Ten in the morning.

Q And you were carrying with you a bag of --

A Narcotics.

Q How many ounces?

A Four.

Q A little over four, right?

A Four.

Q Wasn't an eighth of a kilo?

A Yes.

Q That is a little over four ounces, isn't it?

A Four, a little over.

Q How big is an eighth of narcotics?

A It is not too big, it's small.

Q What are the dimensions of it?

A It depends on how small you make it.

Q How small did you make it that morning, Mr. Barnaba?

A Small enough to put it in my belt.

Q Well, was it six inches high?

A No.

Q Smaller or larger?

A Smaller.

Q How much smaller?

A I think about 5 x 5 inches.

Q You mean it was five inches deep or wide?

A No, this way (indicating).

Q Describing 5 x 5 inches height and width?

A (Indicating).

Q How deep was it?

A The bag?

Q Whatever the package was.

A Two ounces on one side and two ounces on the other (indicating).

Q Mr. Barnaba, I show you a notebook, a loose-leaf notebook,and it has a dimension across what I am calling the width, and that is probably about nine inches, and it has a height and that is about 11 or 12 inches.

A It wasn't that big, no.

Q But in addition it has a depth, a dimension giong back. That depth is what I am interested in now.

How deep was that package of narcotics drug?

A About as deep as that book.

3B

Q I would say that is about two and a half inches, wouldn't you?

A Maybe a little smaller, yeah.

Q And that package, you say, weighed something over 4 ounces?

A 4 ounces.

Q What did you do with it?

A I put it in my belt and brought it on the lot.

Q And when you got it on to the lot, what did you do with it?

A Put it in one of the cars.

Q And was this car locked or open?

A It was locked. I opened it.

Q This lot was open for business at the time, wasn't it?

A Yes.

Q And customers were coming on to the lot, weren't they?

A Yes.

Q And yourboss Jimmy was showing cars to customers, is that correct?

A On that day?

Q Well, he might have been if they came on to that lot, isn't that right?

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MR. CURRAN: I object, your Honor. There is a question pending.

THE COURT: No. I think the question has to be, on a particular day in question was your loss there showing cars to customers?

THE WITNESS: No.

Q Was he there?

A Yes.

Q And if you were engaged with a customer and somebody else came along, Mr. Jimmy would have taken care of that customer, wouldn't he?

A If I'm busy, yes.

Q And he might have shown him that car where you had those narcotics laying right there, isn't that right?

MR. CURRAN: Objection, your Honor.

THE COURT: I will permit it.

Q What is the answer, Mr. Barnaba?

A He may have.

Q And that didn't stop you from putting narcotics right there knowing, as you told this Court and jury, that one more time and you would have a very substantial jail sentence? You left it laying out there in a car in a public lot?

A Under the seat in the car.

Q But there it was?

A Yes.

Q Now, Mr. Burke drove up at what time?

A It was in the afternoon.

Q What time?

A I don't recall the specific time.

Q Late or early afternoon?

A 2, 3 o'clock maybe, around there.

Q So it is your testimony that you left those narcotic drugs in a car in an open lot for four or five hours, is that correct?

A Yes.

Q How was Mr. Burke dressed on this occasion?

A Shirt and pants.

Q No jacket?

A Not that I recall.

Q No coat?

What did he do with this package?

A Put it in his pocket.

Q What pocket, shirt or trousers?

A Back pocket.

Q Trousers?

A Pants.

Q He said thank you and walked away?

A Just walked away.

Q Didn'thave the decency to say thank you?

A I don't recall.

Q Mr. Barnaba, I direct your attention to the time you moved your family from your home. Where did you take them?

A My mother's.

Q Where does she live?

A In the Bronx.

Q Did you also move to your mother's house?

A I was going there occasionally.

Q Where were you sleeping?

A Sometimes there, sometimes where I was living.

Q Were you armed at this period?

A No.

Q And you went to the club to try to see if something could be worked out with Mr. Burke, is that correct?

A Yes.

Q When did you first go to the club to see if something could be worked out with Mr. Burke?

A Right after it happened.

Q The next day?

A A day or two later, yes.

Q You didn't wait two days, it was the next day,

wasn't it?

A Probably. I said a day or two later.

Q And who did you see there?

A Gigi.

Q What did you say to him?

A Told him what happened.

Q That there is somebody out to kill you, is that right?

A No, I didn't say kill me.

Q What did you say? That's what I am trying to get at.

A I says that the fellow says the package was bad, he wanted his money back.

Q When did this conversation with Gigi take place?

A What day?

Q Let us start with a month.

A In May.

Q In may?

A Yes.

Q And Gigi said, in words or substance, "There is nothing I can do," isn't that correct?

A Yes.

Q When did you next see anybody about this incident?

A A few days later.

Q Still in May?

A Yes.

Q Who did you see on that occasion?

A I kept going to the club.

Q Will you answer my question?

A Gigi.

Q And what did you say to him this time?

A If he found out anything about where the guy could be reached, if he knew the guy. He says no.

Q When did you next see anybody about this incident?

A Quite a while later.

Q How long?

A A month, maybe more.

Q So that would take us into June, is that correct?

A June or July.

Q So you saw Gigi twice in May and then a month went by and you saw somebody again in June or July, is that correct?

A I saw Gigi again in July.

Q In July.

What did you do during the month of June, 1971, while you were so greatly in fear for your life?

A I didn't do anything.

Q Did you stay at home?

A Yes.

Q Did you make any effort to work this problem out?

A No.

Q Well, were you seeing anybody at all about this problem?

A No.

Q Then what happened in July that caused this problem to surface again?

A I was back at the club talking and Butchie told me he knew the guy and he would straighten it out.

Q In July?

A In July or August.

Q Isn't it your previous testimony that this happened at the end of August and, in fact, August 20th?

A What happened at the end of August?

Q This conversation with Mamone.

A It was in August some time. I don't know whether it was the 20th.

Q Let me see if I can refresh your recollection about that.

A July or August, yeah. That's what I said.

Q You testified that on this occasion, when Butchie Mamone said that he knew where to reach this guy,

Mr. Mamone overheard a conversation, is that correct?

A Well, he was there, yeah.

Q He overheard a conversation, is that your testimony?

A He was there when Gigi and I were talking about it.

Q I direct your attention to page 1427 of the record of this trial and specifically line 11.

A Yes, sir.

Q And ask whether you said that Mamone overheard a conversation?

A Yes.

Q And would you repeat for this Court and jury the conversation that Mr. Mamone overheard?

A I asked if he had contacted -- if he found out who Burke was --

Q You asked who that, sir?

A Gigi.

Q Go on.

A And Butch chimed in that he knew him and that he could straighten it out.

Q Isn't it a fact that Mr. Mamone said he knew Burke's lawyer, that Mr. Burke's lawyer represented him in civil matters?

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A I don't recall that, no.

Q But it could be, couldn't it?

A No.

Q You just don't recall it?

A I would have remembered if it happened.

Q And you also testified the other day that Mamone said that Burke was a customer of his?

A Yes.

Q You recall that you wrote a handwritten statement for the government in this case, is that correct?

A Yes.

Q In that statement did you write that Burke was a customer of Mamone's?

A No.

Q Why not? Was Burke a customer of Mamone's?

MR. CURRAN: Your Honor, there is a question pending. The question was, "Why not?"

THE COURT: I assume that that question is withdrawn.

MR. ELLIS: Withdrawn.

THE COURT: Is that correct, Mr. Ellis?

MR. ELLIS: Yes, sir.

THE COURT: All right.

Q Is your recollection better today than it was

when you wrote this statement?

MR. CURRAN: Your Honor, I thought there was a question before that question, too, and after the one he withdrew.

THE COURT: I think he withdrew both of them.

MR. CURRAN: I am sorry.

MR. ELLIS: Let us read it back.

THE COURT: Let us not go through it right now. Mr. Ellis, would this be an appropriate spot to take a break?

MR. ELLIS: I am almost finished. If I go another five minutes or so or ten minutes I think that would be it.

THE COURT: All right. Read back the last three questions.

MR. ELLIS: Read back the last one.

THE COURT: All right, the last one.

(Record read.)

A Yes.

Q Did something happen to refresh your recollection?

A I don't understand.

Q As to whether Burke was a customer of Mamone's?

A I thought about it later, I refreshed my memory.

yeah.

Q And you, of your personal knowledge, recalled that Mamone said the words "Burke is my customer"?

A Yeah.

Q And those are the words he said?

A Yes.

Q He didn't say what he was a customer for, did he?

A No.

MR. ELLIS: May I have Government's Exhibits 20 through 20-E, Mr. Curran?

MR. CURRAN: Yes, we will struggle to come up with them.

Let the record show I am handing Mr. Ellis Government's Exhibits 20 and 20-A through E in evidence.

MR. ELLIS: Thank you, Mr. Curran.

Q Mr. Barnaba, after this initial conversation that Mamone overheard, did you meet with Mamone?

A Yes.

Q How long after?

A A couple of days.

Q Where?

A By the club.

Q And at what time of day did you meet?

A As I recollect, it was in the afternoon.

Q In the club?

A Outside.

Q Did Mr. Mamone say something to you on that occasion?

A Yes, he did.

Q What did he say, sir?

A He said that he had straightened it out, not to worry about it any more.

Q Did he say something about $3000?

A Yes.

Q What did he say about $3000?

A He says he told him to deduct the $3000 from the money he owed him and that I owed it to him.

Q And since that day, has Mr. Mamone ever asked you for $3000?

A One time.

Q When was that?

A In '72.

Q What did he say to you and what did you say to him?

A I had a car out there. He stopped up and remind me of the $3000.

Q Did you ever pay him?

A No.

Q And since then you have never heard a word about it?

A No.

Q Mr. Barnaba, you gave certain testimony about photographs being taken at the time of this $3000 conversation, is that correct?

A Yes.

Q I show you Government's Exhibits 20, 20-A through E, and ask if those are the photographs to which you referred?

A Yes.

Q Mr. Barnaba, is there something about those photographs that enables you to determine they were taken in August of 1970?

MR. CURRAN: Objection, your Honor. I think Mr. Ellis may have misspoke. He said August, 1970, your Honor.

MR. ELLIS: 1971.

A I know this is the only time I had a conversation with him outside and it was pertaining to that incident.

Q So you recalled these pictures because this was the only time you had a conversation with Mamone outdoors, is that correct?

A Outside, yes.

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Q And after that conversation, you were never bothered by Mr. Burke again, is that correct?

A Correct.

Q And your wife and your childre are alive and well today, is that correct?

A Yes.

MR. ELLIS: I have no further questions.

THE COURT: All right. Ladies and gentlemen, we will take that break I promised.

Marshals, will you take the jury out.

(The jury left the courtroom.)

THE COURT: All right. Mrs. Rosner, I see that you go next. Do you expect to be long? I am not trying to cut you down, I am trying to figure out how we can best get this done.

MRS. ROZNER: I would say 30 minutes, your Honor

THE COURT: Mr. Martin J. Siegel?

MR. SIEGEL: I'd say about 30 minutes, also.

THE COURT: Mr. Panzer?

MR. PANZER: About ten minutes, your Honor.

THE COURT: Mr. Dowd?

MR. DOWD: If it takes that long, Judge, I don't think I will have anything else to ask. I'd say about 15 or 20 minutes.

THE COURT: All right.

Mr. Lopez?

MR. LOPEZ: Five minutes. He didn't say too much about me.

THE COURT: Okay.

Mr. Fisher?

MR. FISHER: About an hour, your Honor.

THE COURT: All right, thank you.

(Recess.)

4A

(In open court; jury present.)

MRS. ROSNER: May I proceed, your Honor?

THE COURT: Yes, go ahead, Mrs. Rosner.

CROSS EXAMINATION

BY MRS. ROSNER:

Q Good afternoon, Mr. Barnaba. My name is Nancy Rosner. I represent Louis Inglese.

A Good afternoon.

Q I will ask you to keep your voice up. I have been having some difficulty hearing you.

Turn your attention, if you will, to the two narcotics convictions which you told the jury about and specifically to the one in 1953.

A Yes.

Q Who arrested you on that occasion, State or Federal authorities?

A Federal.

Q What was the amount of drugs that was involved in that charge?

A They were ounces. I don't recall just how many.

Q Was it more than 8 ounces, more than half a pound?

A I don't remember.

Q What was the charge in that case, Mr. Barnaba?

A It was sale and possession.

Q How much were you charged with possessing as opposed to selling?

A I don't recall. I know there was a possession count. I don't know how much.

Q It was a matter of ounces, is that right?

A Yes, it was ounces.

Q Mr. Barnaba, at that time were you addicted to the use of heroin?

A No.

Q So the drugs that you possessed you possessed only to sell, is that right?

A Yes.

Q You just hadn't sold them yet at the time you were arrested, is that right?

A Yes, ma'am.

Q Did you cooperate with the law-enforcement authorities in any way in connection with that case?

A No.

Q Turn your attention to the second narcotics conviction which you told the jury about.

Who arrested you on that occasion?

A That was a State arrest.

Q What was the quantity of drugs involved in that case, Mr. Barnaba?

A I think it was a quarter of a kilo, a little more. I am not sure.

Q Did you tell Mr. Rogers on the night that you were arrested that the amount involved in that case was some 6 kilos?

A No, no' ma'am.

Q Was that in fact the amount?

A No, ma'am.

Q What were you charged with in that case, selling or possessing?

A Possessing.

Q Mr. Barnaba, in connection with that second case, did you cooperate in any way with the authorities?

A No, ma'am.

Q By giving information, testifying, or in any other way?

A No, ma'am.

Q What was the amount of time that you received in connection with the first case, Mr. Barnaba?

A Two years.

Q What was the amount of time you received in connection with your second conviction?

A Two and a half to five.

Q There came a time in 1973 when you were arrested again by State prosecuting authorities, is that right?

A Yes, ma'am.

Q And it was again in connection with narcotics charges, is that right?

A Yes, ma'am.

Q And you knew from your past experience, did you not, Mr. Barnaba, that each succeeding offense in connection with narcotics would bring you more and greater penalties, isn't that right?

A Yes.

Q Where were you physically when you were arrested in 1973?

A You mean where they arrested me?

Q Yes. Where physically were you, what street or what avenue?

MR. CURRAN: Objection, your Honor. I think the testimony has been 1972.

MRS. ROSNER: I am sorry, Mr. Curran. Thank you. I stand corrected.

Q In 1972 when you were arrested, Mr. Barnaba, physically where were you?

A Korvette's on Bruckner Boulevard, the Bronx.

Q Were you there about to engage in some narcotics transaction?

A No. We were just talking.

Q Who were you speaking with?

A A colored fellow.

Q What was his name, Mr. Barnaba?

A Jimmy.

Q Was Jimmy someone whom you believed to be engaged -- withdrawn.

Was Jimmy someone with whom you had engaged in narcotics activities in the past?

A No.

Q Mr. Barnaba, prior to your arrest in 1972 -- by the way, do you recollect the date?

A It was in November. I don't -- no, I don't recall the date.

Q Would November 14th refresh your recollection?

A Probably right.

Q Prior to that date you had engaged in a number of narcotics transactions with an undercover agent, isn't that right?

A No,ma'am.

Q When you were arrested in November of 1972 -- withdrawn.

Prior to November, 1972, hadn't you dealt with an undercover agent, someone who unbeknownst to you was a State or Federal law-enforcement authority?

A Not that I recall, no.

Q Mr. Barnaba, that night when you were picked up, taken to Mr. Rogers' office, weren't you told that since July or June of 1972 you had been under observation because of your narcotics dealings with police officers?

A No, ma'am, I don't recall that.

Q Weren't you told, Mr. Barnaba, that during June and July of 1972 you had engaged in sales of narcotics for which you could have been charged with the highest grade of felony known to New York law? Weren't you told that?

A I don't recall that.

Q You don't recall that?

A No.

Q Mr. Barnaba, do you remember the series of questions this morning put to you by Mr. Ellis and on Friday put to you by Mr. Rosenberg concerning Mr. Rogers telling you that you were liable for the highest penalties known to New York law because of your drug activities? Don't you recollect that?

A 50 years, yes.

Q 50 years to life, Mr. Barnaba, wasn't it?

A I don't recall the life. I read it. I don't remember hearing it.

Q You recollect Mr. Rogers telling you that he could indict you for crimes punishable by you say up to 50 years' imprisonment and you don't recollect him telling you what the crimes were?

A No, ma'am.

Q Didn't you ask him, Mr. Barnaba, what it was you had done that merited 50 years' imprisonment?

A No, ma'am.

Q You never did?

A No.

Q How long did you sit and talk to Mr. Rogers that night, Mr. Barnaba?

A A few hours.

Q And never once in the course of the few hours did you say to him, "What am I doing here"?

A No, ma'am.

Q Suffice it to say, Mr. Barnaba, when you were arrested in 1972 you knew in your own mind that you had engaged in narcotics transactions during the summer of 1972 for which you could be prosecuted, isn't that right?

A No, ma'am, I didn't engage in any narcotics transaction in the summer of '72.

Q Mr. Barnaba, turn your attention for a moment to the subject of drug use, if you will.

You indicated to the jury that you yourself have not used heroin, is that right?

A Yes, ma'am.

Q Have you ever used cocaine?

A No, ma'am.

Q Never on any occasion, Mr. Barnaba?

A No, ma'am.

Q Have you introduced any member of your immediate family to the use of cocaine?

A No,ma'am.

Q Specifically, Mr. Barnaba, have you ever given cocaine to your wife to use?

A No.

Q Mr. Barnaba, on the occasions when you purchased narcotics from an individual and later delivered them to someone else, when you were functioning as a wholesaler, as you described yourself to the jury, there were times, were there not, when you had the narcotics for a period of a day or perhaps two days, isn't that right?

A No, not that I recall.

Q Wasn't there ever any occasion, Mr. Barnaba, when you couldn't deliver the drugs on the same day that you picked them up?

A No, I don't recall.

Q Never was?

A No.

Q And as you sit there now you don't know of any occasion --

MRS. ROSNER: Withdrawn.

Q You are telling the jury, Mr. Barnaba, if I understand your testimony, that apart from the statements that you made to Mr. Rogers, the prosecutor, about your own drug activities, to your knowledge, on the night you were arrested he had no proof with which to convict you of a third narcotics violation; is that your testimony, Mr. Barnaba?

A I don't know what the man had.

Q Mr. Barnaba, let's go back in time to the night that you were arrested.

A Yes.

Q How many police officers arrested you?

A Three or four.

Q Maybe more?

A Could be.

Q Drew their guns?

A Yes.

Q Picked you up physically by your arms and threw you into a car?

A They didn't throw me in a car. Escorted me into a car.

Q Escorted you into the back seat between two officers?

A Yes, ma'am.

Q Took you to the office of the chief prosecutor of the State of New York, Mr. Barnaba?

A Yes, ma'am.

Q And told you that that's who he was, right?

A Mr. Rogers?

Q Yes.

A Yes.

Q Told you who you were dealing with, right?

A I don't understand. Dealing? Dealing with who?

Q I will withdraw that. They told you, did they not, Mr. Barnaba --

MRS. ROSNER: Withdrawn.

Q At that moment in time when you were seated across from Mr. Rogers the feeling in the pit of your stomach was cold terror, wasn't it, Mr. Barnaba?

A It was terror, yes.

Q And it was terror because you knew that up until just days before your arrest you had been dealing in narcotics, isn't that right, Mr. Barnaba?

A No, ma'am.

Q When was the last time before your arrest, Mr. Barnaba, that you engaged in any narcotics transaction?

A Well, there was talk, but I never engaged in any, didn't sell anything.

Q When was the last timeyou had a conversation about narcotics prior to your arrest?

A The summertime of that year.

Q What month?

A May or June.

Q This was not your first contact with the law,

was it, Mr. Barnaba?

A No, ma'am.

Q When they sat you down opposite Mr. Rogers did you say to Mr. Rogers, "What am I doing here"?

A No.

Q Did you try to find out, Mr. Barnabas, what evidence it was that they had against you?

A Well, as you said, he told me he had me for an A felony. I didn't have to ask him.

Q He told you he had you for more than one A felony, didn't he, Mr. Barnaba?

A Possibly, yes.

Q Did you ask him how many?

A No.

Q You weren't interested, Mr. Barnaba?

A It is not that I wasn't interested. I was all confused that night.

Q The only thing that you had in your mind that night was getting yourself out of that office and back onto the street, isn't that right, Mr. Barnaba?

A Well, I wanted to get out of the office, yes.

Q And you didn't want to get out of the office and into a cell in the Tombs, did you, Mr. Barnaba?

A No.

Q You wanted to get out, without bail, without charges pending against you, back onto the street a free man, isn't that right, Mr. Barnaba?

A If it was possible.

Q And if it was possible to do so you were going to do it, right, Mr. Barnaba?

A Yes, ma'am.

Q Didn't Mr. Rogers tell you at any time during the course of that evening that your phone had been tapped and they knew exactly what you were up to?

A He may have. I don't recall.

Q Wouldn't that have been something that would have stuck in your mind?

A Probably.

Q From that point in time, Mr. Barnaba -- and that is November, you say, 1972 -- until this very moment the thing that has been uppermost in your mind, your sole concern, has been what you can do to keep yourself from spending so much as one night in jail, isn't that right, Mr. Barnaba?

A Yes, ma'am.

Q You agreed with Mr. Rogers that you would go out on the street and get many people to prove that you were a valuable person to him, isn't that right?

A Yes, ma'am.

Q Mr. Barnaba, if the only thing that you could produce for Mr. Rogers was some poor, pitiable drug addict you wouldn't be much help to him, would you?

MR. CURRAN: Objection, your Honor.

Q In your own mind, Mr. Barnaba, did you think --

MR. CURRAN: Objection, your Honor.

THE COURT: I believe Mrs. Rosner is withdrawing the question.

MRS. ROSNER: I will put it in what I think is proper form, your Honor. I will try, anyway.

Q Inyour own mind, Mr. Barnaba, as you sat in Mr. Rogers' office that night and as you sit here now, you believe, don't you, that if you can only produce evidence against some pitiable narcotics addict Rogers or any other prosecutor isn't going to trade you for that person, isn't that right, Mr. Barnaba?

MR. CURRAN: Objection to the form of that question, your Honor.

THE COURT: It is argumentative. Go ahead, Mrs. Rosner.

Q Mr. Barnaba, did you think in your mind that you had to produce people in order to persuade Rogers or any other prosecutor to get you off the hook?

A No.

Q You never thought that, Mr. Barnaba?

A No, ma'am.

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Q Don't you kind of feel in your own mind that the more people you name, the more deals you describe, the more valuable a witness you are, the better it is for yourself? Don't you think that?

MR. CURRAN: I object to the form of that, your Honor.

THE COURT: I will permit it. It is argumentative, but go ahead and answer it.

A No, ma'am.

Q You don't think that, Mr. Barnaba?

A No.

Q After the initial night when you were interviewed by Mr. Rogers, you were interviewed on many occasions by state law enforcement authorities, isn't that right?

A What do you mean by interview?

Q Did you have discussions about your own narcotics transactions with people connected with the state prosecutor's office after you were arrested?

A No, ma'am.

Q You never spoke to anyone after you spoke to

Mr. Rogers?

A No.

Q Well, didn't you go out --

THE COURT: Wait a second. You got a double negative floating around in there. I don't know which one it is.

MRS. ROSNER: Perhaps the question is not clear, your Honor. I will try to put it again at the risk of being repetitious.

Q After the night on which you were arrested and agreed to cooperate, didn't you have discussions with other people connected with the state prosecuting authority about your own narcotics transactions?

A No.

Q You never did?

A No.

Q Didn't anyone sit you down and ask you what you knew, Mr. Barnaba?

A No.

Q They were just happy to have you around?

MR. CURRAN: I assume that is a question.

THE COURT: I assume it is a gratuitous comment.

Q After the time, Mr. Barnaba, that you began

cooperating and up until today, did you ever get so much as a grain of narcotics from Louis Inglese?

A No, ma'am.

Q And you knew, did you not, Mr. Barnaba, that the time that you were on the street after your arrest was the time when you were supposed to be proving yourself, making cases, isn't that right?

A Yes.

Q However, when you were on the street after your arrest, did you meet a fellow named Frank Stasi?

A Yes, I did.

Q Didyou have a couple of conversations with Mr. Stasi about purchasing narcotics?

A Yes.

Q Did Mr. Stasi offer to sell you some heroin?

A Yes.

Q On more than one occasion, didn't he?

A Yes.

Q Did he, in fact, sell narcotics to an individual, an undercover agent, that you introduced him to?

A Yes, ma'am.

Q You set up Frank Stasi, didn't you?

A If that's what you want to call it.

Q Now, you say that you never spoke to any state police officer or anyone else connected with the state authorities about what you knew about the narcotics business, is that right, after your initial interview with Mr. Rogers? Was that your testimony?

A Do you mean a session where notes were being taken?

Q No, Mr. Barnaba, I didn't ask you that. I am asking a very simple question.

After the night when you were arrested did there come a time when you spoke with either a police officer or an assistant district attorney or a law enforcement agent of any kind about what you knew about the narcotics business?

A Not that I recall, no.

Q You never had a conversation with anybody connected with the prosecutor's office about what you knew?

A Other than that first time with Mr. Rogers, I don't recall any other conversation.

Q Didn't you go out with agents day after day?

A Yes.

Q On the streets looking for people?

A There was no conversations.

Q You never spoke to them, Mr. Barnaba?

A To who?

Q To the agents that you were out with every day.

A Yes.

Q And didn't you talk to them about past deals of yours and what you had done and the cases you were going to make for them?

A No, not that I recall.

Q They didn't ask you?

A No.

Q Just made small talk with them?

A All we were doing was going on the street different places, that's all. There was no conversations.

Q You were just leading them around by the nose, is that right, Mr. Barnaba?

MR. CURRAN: I object to the form of that.

THE COURT: For the record, the objection is sustained.

Q Now, eventually there did come a time when you testified before a grand jury in the state courthouse, isn't that right?

A Yes, ma'am.

Q Do you know when that was?

A No, I don't recall it.

Q Do you remember the month?

A No.

Q Wasn't that just 1973, Mr. Barnaba?

A The state court?

Q Yes.

A Probably, yes.

Q You don't remember the month?

A No.

Q Had you ever appeared before a grand jury before that?

A Before the statement?

Q Yes.

A No.

Q The first time in your life?

A Yes, ma'am.

Q Would it refresh your recollection if I suggested to you that that was May 29, 1973?

A I know it was in the summer. I don't know the month.

Q By this time you had been cooperating about six months, is that right?

A Yes, ma'am.

Q And as you told us before, the thing that was uppermost in your mind was what you could do, what information you could give to help yourself, is that right?

A It wasn't information, like I said, we were going on the street.

Q Well, didn't you have to recollect what you had done in 1969 and 1970 and 1971?

A For who?

Q For anyone; the state authorities, the federal authorities.

A Not at that time, no.

Q Not at that time?

A No.

Q That all came later, Mr. Barnaba?

A Yes, ma'am.

Q When you appeared before the grand jury, the state grand jury, were you asked questions about Louis Inglese?

A I think so, yes.

Q Now, in your direct testimony here, you told this jury about a whole series of transactions, purchases that you say you made at the Beach Rose Social Club, isn't that right?

A Yes, ma'am.

Q Maybe six or seven different occasions, Mr. Barnaba?

A Yes, ma'am.

Q In May of 1973 were you asked this question by Mr. Miller, the assistant district attorney who was with you in the grand jury:

"Q At any time in the past have you ever had occasion to speak to him," referring to Louis Inglese, "about narcotics or to purchase narcotics from him?

"A Yes.

"Q On how many occasions?

"A Two"?

Were you asked those questions, Mr. Barnaba, and did you make those answers?

A Yes, ma'am.

Q Do you recollect testifying that way?

A Yes, ma'am.

Q Six months, Mr. Barnaba, you haven't thought about the rest of what you have told this jury now?

A No, ma'am.

Q You thought of all that later, is that right?

A Yes, ma'am.

Q When the state poeple told you that they couldn't use you?

A I was never told that.

Q You weren't, Mr. Barnaba?

A No, ma'am.

Q You are sure about that?

A Positive.

Q Didn't Mr. Miller or someone --

MRS. ROSNER: Withdrawn. Let me phrase it this way:

Q Did anyone connected with the state prosecuting authorities tell you that because you couldn't corroborate the information you were telling them, they wouldn't use you as a witness? Were you told that, Mr. Barnaba?

Q No, ma'am.

Q You are quite sure about that?

A Positive.

Q In part of your testimony to this juryyou said, I believe, that Mr. Inglese told you that Joe Delvecchio was his partner. Do you remember that?

A Yes.

Q And that they had been partners since child-

hood. Do you recollect saying that?

A Yes, ma'am.

Q And that is still your testimony now, is that right?

A Yes, ma'am.

Q Do you happen to know how old Joe Delvecchio is?

A How old he is? No, ma'am.

Q Well, would you estimate his age from having seen him?

A I wouldn't try to guess that, no.

Q You couldn't guess at his age?

A No, I wouldn't say.

Q Would it refresh your recollection if I suggested to you that Mr. Delvecchio is about 30 years old?

A No.

Q Have any idea how old Mr. Inglese is?

A Yes.

Q About how old?

A Thirty-eight, 39.

Q And does that refresh your recollection about whether Mr. Inglese ever told you that since childhood he was partners with Mr. Delvecchio?

A I don't understand that.

Q Well, when Mr. Delvecchio was -- when Mr. Inglese was 20 years old, Delvecchio would have been about 10, isn't that right, Mr. Barnaba?

MR. CURRAN: I object to that, your Honor.

THE COURT: I don't think you have a foundation for that.

Q It is a fact, is it not, Mr. Barnaba, that you grew up or lived for a long period of time on the same block that Mr. Inglese's wife Sophie grew up on, isn't that right?

A I don't know if they grew up there or not.

Q Was there a period in your life, a long period of time, whenyou lived on the same block with Mr. Inglese's wife Sophie?

A A long period of time? A few years.

Q About how many years?

A Two, three. I don't recall.

Q And how many years in toto would you say you have known Mr. Inglese?

A Fifteen.

Q About 15 years?

A Maybe more.

Q During this period of time there was a time when you worked for Crosby Cabs, isn't that right?

A Yes.

Q And you had occasion, did you not, sometimes to pick up Mr. Inglese or some other member of his family and take them somewhere, isn't that right?

A I think it was one time.

Q Could it have been more than once?

A No.

Q You are quite sure about that?

A Pretty sure.

Q When was that one time?

A I took him down to the Americana one night.

Q When was that, month and year?

A Oh, I don't remember.

Q You don't remember. Did you ever have occasion to go to Mr. Inglese's house --

A Yes.

Q I am sorry, I wasn't finished with the question, Mr. Barnaba.

A Sorry.

Q Was there ever a time you went to Mr. Inglese's house in connection with your need for money?

A Not that I recall, no.

Q Let me see if I can refresh your recollection.

Do you remember a time when you went to Mr.

Inglese to borrow money for your rent?

A Yes.

Q And he gave it to you, didn't he?

A Yes.

Q When was that, Mr. Barnaba?

A It was in the summertime. I don't know -- I don't recall the year. I don't recall the month.

Q Just some summer? Was he living at the same house that he --

MRS. ROSNER: Withdrawn.

Q Was he living at a house on Dwight Place in the Bronx at that time?

A Yes, ma'am.

Q When you started your direct testimony you mentioned the last address that you had lived at in the Bronx. Do you recollect that?

A Yes, ma'am.

Q What was that address?

2065 Hermany Avenue in the Bronx.

Q How long have you lived there or how long had you lived there, Mr. Barnaba?

A At that time?

Q Yes.

A Seven, eight years; maybe more.

Q Did you ever fail to pay the rental on that premises for a number of months?

A Where, 2065?

Q Yes.

A My father-in-law owns that house.

Q Was there some address that you -- did you have any other address during the past seven or eight years that you described?

A Yes, ma'am.

Q Where was that?

A The same block, down further.

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Q What was the address?

A 2111, something like that. I don't recall.

Q On the same Hermany Avenue?

A Yes, ma'am.

Q And when did you take up the lease or rent that place?

A '68.

Q 1968, and you also kept the lease after that?

A Well, I lived there for about a year.

Q And did you lease that place without paying about six or seven months of your rent?

A I don't recall.

Q Was there ever a time when you were living any place when you didn't pay the landlord for six or seven months and they took you to court?

MR. CURRAN: I object to that, your Honor.

THE COURT: No, I will permit it.

Go ahead, Mr. Barnaba, answer the question.

A Yeah. What was that?

Q The question is whether you ever lived in an apartment or had a lease and did not pay the landlord for about six or seven months.

MR. CURRAN: I object to that, your Honor.

MRS. ROSNER: Maybe we will have the reporter

read it back if that is not the same question, your Honor.

THE COURT: No, no. No, I will permit it.

A Answer it?

THE COURT: Yes, go ahead and answer it, please.

A Yes. I don't think it was six or seven months.

Q What was the address, Mr. Barnaba?

A Hermany Avenue, 21- something. I don't recall it.

Q Does the address 641 Revere Avenue refresh your recollection?

A Yes.

Q It does?

A Yes.

Q And when did you take up the lease on that apartment?

A In the summer of '72, I think.

Q And with whom did you occupy that apartment?

A My wife and children.

Q And how long did you live there?

A Not too long.

Q About how many months?

A Eight, nine months, maybe a little more.

Q And wasn't it the fact that you failed to pay the rent on that premise for about six months and eventually

you were sued for that?

MR. CURRAN: Objection, your Honor.

THE COURT: Yes. I think at this point we are going far afield.

The reason I permitted it before, Mrs. Rosner, I gather you wanted to tie down a date when Mr. --

MRS. ROSNER: That is what I am trying to do, your Honor.

THE COURT: You got the summer of 1972 and you have eight or nine months.

MRS. ROSNER: If I may just ask one more question along that line.

Q To the best of your recollection, Mr. Barnaba, how long was it that you failed to pay the rent for it?

A It was a few months, but there was a reason for that.

Q Mr. Barnaba, as you sit here today, if there was something that you could say to keep yourself from going to jail you would say it, wouldn't you?

A If it was the truth, yes.

Q Oh, Mr. Barnaba, let's go back just a moment.

You told Mr. Rogers that you would do anything possible to keep yourself from spending so much as one night in jail, isn't that right?

A I don't recall the anything possible. I told him I didn't want to go to jail, yes.

Q Do you remember Mr. Rogers saying to you -- this is A274, at page 72 -- "John, I got to make a decision in the next hour or so, right? What's the charge? What's the bail? Right? And it's based on your willingness to" --

MRS. ROSNER: I am sorry, was there an objection?

MR. CURRAN: I was just waiting for you to finish.

THE COURT: I was trying to find it.

MRS. ROSNER: I am sorry, your Honor, I didn't know you didn't have a copy.

THE COURT: This is Government's Exhibit 3550-A?

MR. CURRAN: Yes, your Honor.

THE COURT: What page is that?

MRS. ROSNER: At page 72, your Honor, at the bottom.

THE COURT: All right, go ahead.

MRS. ROSNER: Thank you.

Q Do you remember Mr. Rogers saying to you on the night that you were arrested --

MRS. ROSNER: Mr. Curran, you are rising for some reason?

MR. CURRAN: I am going to object when you finish the question.

My objection is to the form and the basis of the objection was already in the question. That is why I rose, your Honor.

MRS. ROSNER: I shall try to rephrase the form so we don't go through it twice.

Q On the night that you were arrested, do you recollect Mr. Rogers saying to you, "John,I got to make a decision in the next hour or so, right? What's the charges? What's the bail? Right? And it's based upon your willingness to cooperate with us.

"I know what you know. I know 50, 60 per cent of it. Right? I can't possibly be inside your mind, but I know basically whether you are leveling with me or not."

And did you respond to him, "I'll tell you what I'll do. I'll work with you. All right? Feed it to me. You tell me what you want, I'll get it for you. But there's got to be a condition. I can't go into --"

And the conversation breaks off.

Do you remember that, Mr. Barnaba?

MR. CURRAN: If we are doing it, your Honor, can we finish the answer?

MRS. ROSNER: Sure.

Q "I got to have -- you got to let me go out of here. You can't put me on bail."

Do you recollect making that statement, Mr. Barnaba?

A Yes, ma'am.

Q And in that moment in time and up to the present, you will do anything to keep yourself from going to jail, isn't that right, Mr. Barnaba?

A I don't want to go to jail.

MRS. ROSNER: I have no other questions, your Honor.

THE COURT: All right.

Mr. Martin J. Siegel, do you wish to examine?

MR. SIEGEL: Yes.

THE COURT: All right.

MR. SIEGEL: Your Honor, may I approach the bench please?

THE COURT: Sure.

(At the side bar, Mr. Siegel, Mr. Curran and the Court present.)

MR. SIEGEL: Your Honor, my cross-examination will last approximately half an hour. Would you like me to start now or would you like me to start tomorrow?

THE COURT: I did not note down who said what? I thought you said ten minutes.

MR. SIEGEL: That was Mr. Panzer.

MR. CURRAN: Mr. Lopez said five minutes, I think Mr. Panzer said ten.

MR. SIEGEL: If at all possible --

THE COURT: You want to do it in one shot?

MR. SIEGEL: Yes.

THE COURT: Mr. Clerk, would you get Mr. Panzer up here and Mr. Lopez, also.

(Mr. Panzer and Mr. Lopez approach the side bar.)

THE COURT: The one thing I want to avoid is breaking up someone's cross-examination.

Mr. Siegel reminds me that he said he would take about 30 minutes on cross. We have about 10 minutes left.

Mr. Panzer, I wasn't sure if you --

MR. PANZER: I said 10 minutes.

THE COURT: Would you object to going out of the order you are in right now?

MR. PANZER: No.

THE COURT: Do you have any objection?

MR. LOPEZ: No.

THE COURT: I don't think anybody would. All right.

(In open court.)

CROSS EXAMINATION

BY MR. PANZER:

Q Mr. Barnaba, on Friday you testified about a fellow named Harry. Do you remember that?

A Yes.

Q This fellow Harry, would that be Harry Pannirello?

A Yes.

Q And --

THE COURT: Mr. Panzer, would you try and speak into the microphone, please.

Q And this Harry Pannirello, he is an honorable ma like yourself?

MR. CURRAN: Objection, your Honor.

THE COURT: Sustained.

Q Mr. Barnaba, isn't it a fact that Harry Pannirello was associated with you while you were distributing drugs?

A I don't understand that.

MR. PANZER: Would the court reporter read the question back to him, your Honor, please?

THE COURT: Yes. I think the problem comes in with the words "associated with."

MR. PANZER: I will rephrase it, your Honor.

Q Mr. Barnaba, you were in the business of selling drugs, right?

A Yes.

Q Mr. Harry Pannirello was in the business of selling drugs, right?

A Yes.

Q And while you were selling drugs, you were working with Mr. Harry Pannirello, isn't that true?

A Yes.

Q So you and him were like in a partnership, right?

A No.

Q Mr. Pannirello was your source, wasn't he?

A You mean Patty. Yes.

Q And when you needed drugs, you went to Harry Pannirello and Patty, right?

A Yes.

Q By the way, Mr. Barnaba, do you know whether Mr. Pannirello is going to be a witness for the government like yourself?

A No, I do not.

Q Isn't it also true, Mr. Barnaba, that in November of 1971 you went with Harry Pannirello over the George Washington Bridge to the Howard Johnson Motel where you distributed narcotics?

A Yes, sir.

Q You were present, right?

A Yes, sir.

Q And you saw him do that, right?

A Yes, sir.

Q He didn't hesitate, right?

A No.

Q Andhe didn't hesitate because he was interested in making money, right?

A I imagine so.

Q You never hesitated, did you?

A Pardon?

Q You never hesitated when you sold drugs, did you?

A I don't know. I don't think so.

Q You were interested in making money, right?

A Yes.

Q Isn't it also a fact, Mr. Barnaba, that you paid Harry Pannirello and this fellow Patty $6000 on two separate occasions for drugs?

A Yes,sir.

Q And that was November, 1971, right?

A October and November, yes.

MR. PANZER: I have no further questions.

THE COURT: Boy, you can't cut it much closer than that. We have about three minutes left of the court day, at which we are going to excuse you.

Ladies and gentlemen, I am asking the marshal now to take you out. Please, of course, don't discuss the case with anyone. All right?

Go ahead. Have a pleasant evening.

(The jury left the courtroom.)

THE COURT: Mrs. Rosner, you have an application?

MRS. ROSNER: The most important one in the entire trial, your Honor.

I got the bill for the transcript. We now owe our lives. The last bill I got was a little over $6000. The application would be for this, your Honor:

We are 20 lawyers, approximately. If your Honor would see fit to permit assigned counsel to add on to their vouchers or however it is done, enter an order or whatever --

THE COURT: We don't need this on the record,

do we?

MRS. ROSNER: If you don't want to do it on the record, okay.

THE COURT: I don't think we need to do it on the record.

MRS. ROSNER: All right.

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THE COURT: Any other application?

MR. RICHMAN: Yes, your Honor. I would just like to let you know that Tuesday morning my client takes his wife to be examined. She is paralyzed, your Honor. He will be here 45 minutes late.

THE COURT: That is all right. Don't worry about it.

MR. PHILLIPS: Your Honor, the only thing O have, Mr. Engel just went upstairs to get the forms that we are going to ask Mr. Inglese to write the names on. Your Honor doesn't have to be here, obviously.

THE COURT: Thanks.

Yes, Mr. King.

MR. KING: I should like to know if the government intends to call, besides Harry Pannirello, Patty, John Pannirello and Provitero?

MR. PHILLIPS: We intend at this time,

your Honor, to turn over the 3500 material for Harry Pannirello. Beyond that --

THE COURT: Beyond that we will all be surprised.

MR. KING: I am sorry. I didn't hear it.

THE COURT: He is going to turn over to you all the 3500 material on Harry Pannirello tonight.

Do you have a problem?

MR. FORTUIN: I would like to identify some 3500 material for the record. I would like the reporter and the lawyers present, but I don't think we need your Honor.

THE COURT: All right. Look, I tried to get court started at 10 minutes to 10, a quarter to 10 this morning. It didn't work out because of the serious absence of a large number of attorneys.

I don't mind taking the applications which you folks might have, but I get tired too and taking them in the afternoon is the worst time to approach me. Shall we try again tomorrow to be here at a quarter to 10 so we can take the applications and have the trial start at 10 o'clock? If anybody doesn't want to show up, that is your problem. I want all defendants here at a quarter to 10 tomorrow.

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All right. See you then.

(Adjourned to February 12, 1974, at 9:45 a.m.)